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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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WEDNESDAY, APRIL 18, 2007
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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 18, 2007

1:36 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

SUSIE SWATT, Consultant to SENATOR ASHBURN

MEGAN GARCIA and ESMERALDA SORIA, Consultants to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

MARISELA MONTES, Chief Deputy Secretary
Adult Programs
California Department of Corrections & Rehabilitation

FRANK L. RUSSELL, Director
Division of Education Vocations & Offender Programs
California Department of Corrections & Rehabilitation

FRANK RAMIREZ
The Americas Group

CINDIE FONSECA
SEIU Local 1000

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P-R-O-C-E-E-D-I-N-G-S

--oOOoo--

CHAIRMAN PERATA: We have two appointees today from the Governor's shop, Marisela Montes and Frank Russell. If you'd both come forward.

Ms. Montes is the Chief Deputy Secretary for Adult Programs. Mr. Russell is Director of the Division of Education, Vocations and Offender Programs. Big titles.

We're going to ask both of you to respond to different questions because these are all programmatic largely.

I want to just say at the outset that this is the first in a whole series of confirmations that we have for the Department of Corrections. Most of the top managers of CDCR will be up for confirmation this session. A lot of tough policy issues are at stake that everybody's aware of.

The Legislature has been gappling with this through the budget and a number of requests that the Governor has made directly to us.

It's really like picking up a cloud, because you sort of lose it as soon as you grasp it. And there's so many pieces that seem to be dysfunctional, that what we're really trying to do is to put some emphasis on at least the part that we think has been grossly neglected. And I think this is shared generally by Republicans and Democrats, and that is, there needs to be more rehabilitation done.

And so, today is about adult programing. These issues will be reviewed again, if they haven't all ready, through our subcommittee, Sub Four, with Mr. Machado.

I would think that this will probably be spring training compared to the World Series when you get in Subcommittee Four.

Part of what we want to get into today with you is who's responsible for what, and what programs are really a priority for the department. So, you work there, and you have a better idea than anyone.

And so, I would just state that no one's here to blame anybody for anything, but we do want to put as much emphasis on candor as possible.

The inmate population, as a snapshot, we have about 170,000-180,000 felons. Of those, fewer than 15,000, according to our records, are in academic programs, and fewer than 9,000 are in vocational programs. So if you add those two together, you've got a fraction of the overall incarcerated population engaged in either academic or vocational. I know not whether even some of them are two-fers.

About 6,000 inmates are employed with the Prison Industry Authority in paying jobs that can lead to outside employment. But PIA is separate from vocational and educational programs, but we'll toss that figure in.

There is something called bridging, which is a self-directed, self-study activity that earns inmates day-for-day credits while awaiting assignment to a permanent prison, and it's an additional 15,000-plus inmates that are involved. It's kind of hard to know. It's another one of those clouds.

So, then we know that we have a male inmate

reading level of seventh grade, and a female inmate reading level of eighth grade. Even in jail they're ahead of us; that's amazing.

There are 23 percent teacher vacancies. And then on top of that, I know from many people testifying first-hand who have been out and looking at the prisons, that we are woefully deficient in contemporary educational tools, especially technology. We've even heard that there are principals in the various schools throughout the system that do not have e-mail, which is relatively surprising; although, we didn't have e-mail until recently in the Senate, either, but that's no point of pride. Some people just flat didn't like the 21st Century and weren't going.

The attendance, grading and transcripts are still all done in hand, by hand. And considering the nature of the population, it must be very difficult to track people who go here or go there.

From what we've learned through our various committees, there's not as much of a direct bearing on overcrowding to the condition that we've described, because they've been the same for quite sometime, and not withstanding lockdowns and various other things.

I know that the Governor has been very fond of saying you can't have rehabilitation because we've got people who are now domiciled in places where that would go on. But the plain fact of the matter is, there have been many Members visiting sites where they've seen educational facilities that were dark. Nobody was sleeping in them, they were just dark.

These are sort of by way of background. I am interested in how programs have improved since the reorganization in 2005. And I was then and am now, perhaps even more, confused about who's responsible for what.

Our staff observed a Witness Awareness Program at San Quentin two weeks ago. Who is in charge of that program? Who gets the facilitator? Who monitors whether the facilitator is doing a good job? And who decides that the program is so good that it should be replicated elsewhere? Or whether even we should have more than two at San Quentin.

Do you want to coin flip? Let them open?

I'm sorry. Did you want to say something before we torture you?

[Laughter.]

CHAIRMAN PERATA: You can either go "not guilty" or "nolo contendere."

[Laugher.]

CHAIRMAN PERATA: I apologize.

MS. MONTES: I believe we both have an opening statement.

CHAIRMAN PERATA: Go ahead. I was just so excited about being able to talk about this.

[Laughter.]

MS. MONTES: Well, thank you, Chairman Perata, Members of the Committee.

My name is Marisela Montes. I'm here today to seek your confirmation for the position of Chief Deputy Secretary for Adult Programs.

I was asked by Secretary Tilton to help him lead a transformation, a transformation that calls for CDCR to embrace rehabilitation as a central part of its core, a central part of its mission; to adopt initiatives proven to reduce recidivism; to create a culture that values offender programs for both their prison and community safety impact.

Now, for nearly eleven months, I've been honored to serve in this capacity, and in that time we've developed a shared vision for offender programing. We've implemented 27 of the 29 recidivism reduction strategies that were outlined in our August 2007 [sic] Report to the Legislature. We've trained staff in project management to ensure that new programs are delivered on time, on budget, and within scope.

We are developing extraordinary partnerships with communities across the state, many of whom are willing to work with us on the Governor's reform on re-entry, and we've invited national experts to assist us in developing a program model for California prisons as parole based upon best practices and the research on what works.

We're moving forward with urgency, but I believe in a very thoughtful and purposeful way. Yet we've only begun to scratch the surface of what's possible.

My role as Chief Deputy Secretary is to provide vision for offender rehabilitation programs, coupled with concrete plans and strategies to make that vision a reality. Fortunately I work with extraordinary -- an extraordinary team of professionals, both internally and externally, that share my view that offenders are capable of change.

And thankfully, I also have an incredibly supportive family whose endless love allows me the flexibility to fulfill my life's work.

Senators, I want to commit to you my leadership, energy, and passion to improve public safety in our communities through offender programing.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. RUSSELL: Mr. Chairman, Senators, staff members, 42 years ago I was hired as a student at the Reception Center at CIM, California Institution for Men in Chino in what was then the California Department of Corrections. I was paid $1.99 an hour. And I was senior at Pepperdine, approaching graduation, and I needed a job.

And I was offered a job by the Department as a correctional casework trainee. And I was also at that time, I'd been working, organizing Boy Scout troops, and the Scouts offered me a job as a scouting -- full-time Scouter.

I decided to take the Corrections job because it paid $45 a month more, which at that time was about 10 percent of what they were paying. And when I told the Scouting executive what I decided, he said he was troubled by that. He said that he had known people who had gone into Corrections, and he had noted that they had lost their optimism.

So, I decided I was going to take that job because I thought I might need that money, but I also decided I was not going to lose my optimism.

And after all these years, I have not lost my

optimism, and that has a lot to do with why I'm here today.

I retired in 2000, and I enjoyed a very happy retirement. Our family home is in Sonora, and it's near our son, and I enjoy taking walks every morning with my three-year-old grandson. I had a great job working with Health Net, designing and implementing substance abuse treatment programs.

And so, when I was first approached about this position, I was intrigued but cautious. As I looked into it, though, I discovered that there was a consensus that had emerged among researchers, and Legislators, and administrators, and even the public that using evidence-based methods to prepare inmates for success when they're released from prison is good public safety.

I was encouraged by the $52.8 million, the package of recidivism reduction initiatives that were approved by the Legislature and by the Governor's plan to make the "R" in CDCR more than just a letter.

So, I refinanced -- we refinanced our home so that I could afford to take this challenge, and here I am.

And I'm excited about the opportunity to transform our program delivery system so that we can reduce crime and victimization through successful post-prison re-entry.

So, what are our plans? And what do we think we can accomplish?

In a situation where there are a multitude of challenges, there's a temptation to try to fix everything at once. We need to resist that temptation and focus on near, and

mid, and the long-range goals we can actually achieve.

To this point, although not exclusively, we have been focusing on developing a process that matches inmates with the right programs and gets them to those programs at the right time, in the right sequence, at the right intensity, for the right duration to optimize the program's potential to reduce parole failure.

And we've been overcoming the obstacles that keep inmates from getting to the programs they need, and setting up accountability systems to ensure the programs operate as they were designed all around this large, diverse system.

Thank you.

CHAIRMAN PERATA: You had to refinance your house?

MR. RUSSELL: Had to do, yes. The combination of being retired and having a great job.

CHAIRMAN PERATA: Is your wife still talking to you?

[Laughter.]

MR. RUSSELL: She was a minute ago.

[Laughter.]

CHAIRMAN PERATA: Would Saint Russell please stand.

[Laughter.]

CHAIRMAN PERATA: Pay attention and see how far this gets you.

Do you have family here, too?

MS. MONTES: Yes, I do.

CHAIRMAN PERATA: Would you like to introduce them?

MS. MONTES: Yes. My husband, Scott, and my 13-year-old son, Peter.

CHAIRMAN PERATA: Welcome.

MS. MONTES: Thank you.

CHAIRMAN PERATA: Let me ask you again, it's impressive, and it's a pretty long schlep from Pepperdine to Chino, too; wasn't it?

MR. RUSSELL: Actually it was in those days, especially because the freeways were built all the way up there. I thought maybe I was going to end up in Nevada or somewhere by the time --

CHAIRMAN PERATA: It may not be any faster today with the freeways.

[Laughter.]

CHAIRMAN PERATA: I've been on those lately.

If we just go back to looking at this, it's that old thing about how do you eat an elephant? A bite at a time. But it's kind of hard to know where to bite first.

So, let's go back to the question about the victims awareness program. What is that? Just sort of take us through.

I had to ask this question. What is victim awareness?

MS. MONTES: The Victims Offender Reconciliation Group is actually a program that began -- it's a self-help program that was initiated at California State Prison in

Solano. And I was there at the time when we first initiated that.

What it is, is an opportunity for offenders to come to terms with the impact that they've had on offenders [sic]. They spend a number of weeks together, getting -- literally getting in touch with their emotions, their feelings, beginning to understand what kind of impact their crime had not only on their direct victims, but on their families, on their communities. And then that all leads up to a culmination where they sit face-to-face with not their particular victim, but a victim of that particular crime. And they have an opportunity to express remorse, their feelings, what they've learned, take responsibility for their crime.

And of course, the hope is that that's something that will remain with them once they leave our prisons and return to our communities.

We have -- that program has expanded to a few locations. We had an opportunity to see one of those groups at San Quentin on our recent tour. It is run by volunteers, so it's really up to the institution to identify volunteers in the community who can come in and perform those -- those groups.

It varies. We are fortunate in the San Quentin area to have a multitude of volunteers who are willing to come in and help us at that particular location. In some more remote locations, it's a little bit more of a challenge.

But self-help is the responsibility -- is currently the responsibility of -- or at least it's housed under Adult Programs, the community of -- excuse, me the Division of

Community Partnerships has responsibility for overseeing. Obviously, from Sacramento you can't manage a program out in prisons, but they are responsible for overseeing the budgeting, the funding for self-help sponsors and the like.

CHAIRMAN PERATA: The program started at Vacaville?

MS. MONTES: At CMF. It was then called CMF South. It's now CSP Solano. That's the first knowledge that I had of a victim offender --

CHAIRMAN PERATA: So then it was somehow replicated at San Quentin?

MS. MONTES: At San Quentin.

CHAIRMAN PERATA: Who made the decision? Who decided this is a good enough program to replicate?

MS. MONTES: Well, I wasn't here at the time when that decision was made.

CHAIRMAN PERATA: Who would you guess made it? Who would make it now?

MS. MONTES: Who would make it now? It would be up to the warden. We share information. We have a process, a quarterly performance review, called the COMPSTAT process, where wardens all have an opportunity to share with us how they're doing on their various performance metrics.

And that's one of the areas that we examine, is what has been the participation in your self-help groups, and your leisure time activities.

CHAIRMAN PERATA: So, he or she ultimately would have to agree? You could recommend this as a good program, but

the warden would have to agree?

MS. MONTES: Well, they'd have to go out and solicit volunteers in the community.

CHAIRMAN PERATA: The threshold decision is made by the site administrator, the warden.

MS. MONTES: The warden is responsible for everything that goes on in his or her prison, yes.

CHAIRMAN PERATA: What would happen if you thought this was a good candidate for a prison, and then the warden didn't want to do it?

Let me ask it another way. Are you simply, and I don't mean this in any demeaning way, a functionary? You're there to provide the services when and if asked by a warden?

MS. MONTES: Well, part of what we do, our current approach has been to try to identify evidence-based practices, best practices that are occurring across the country, some examples of innovative and promising programs. Then we share that information with wardens.

CHAIRMAN PERATA: But it's not mandated?

MS. MONTES: No, it's not mandated, but we try to --

CHAIRMAN PERATA: I just want to know what the truth is. I'm not faulting anybody here.

MS. MONTES: No, it's not mandated.

CHAIRMAN PERATA: So, you can have a good program, but if the warden decides it's not important -- I worked in a school system, so I know what this is about.

AA programs, tell us about the AA.

MS. MONTES: Frank doesn't oversee --

CHAIRMAN PERATA: You don't have any idea?

MR. RUSSELL: I certainly have an idea.

[Laughter.]

CHAIRMAN PERATA: Frank, let me know when there's something I'm asking, because I don't want to spend a lot of time trying to bifurcate who does what here.

So, tell me about the AA.

MS. MONTES: Well, it's another one of the self-help programs. So, we have in actually every institution, all 33 prisons have self-help programs, including AA, NA, CA, a variety of self-help programs.

And just last quarter, looking at our quarterly COMPSTAT statistics, we had a little over 5,000 meetings in our prisons just last quarter. And participants totaling -- I'm sorry -- 5,000 participants participating in over 25,000 meetings. So, they meet more than once a week and so on.

CHAIRMAN PERATA: And this, again, is under the direction of the local warden?

MS. MONTES: Yes. We provide some direction and some support for that through headquarters, through our Community Partnerships Group, headed up by Del Sayles-Owen.

CHAIRMAN PERATA: Generally, are all programs run in a similar manner? That is, you don't really have a system-wide implementation program. You have a panoply or a smorgasbord of possible services, and then the wardens determine which ones they'll take?

MS. MONTES: Well, I think every warden -- actually, my experience has been every warden is looking for as many programing opportunities that they can find.

And there was a time that we had what were called Community Resource Managers in every prison. And their responsibility was to cultivate volunteers to come into the prison to provide a lot of the self-help programing.

Unfortunately, in the budget cuts of '03-'04, all the Community Resource Managers were cut in our prisons.

And so, I think most of the prisons today have been struggling to determine how exactly are we going to do this. But many of those programs that had already been started have continued because the volunteers are already in place, and they continue to want to participate.

CHAIRMAN PERATA: On the teaching side, I've been told through the budget that the administration is proposing to take the funds from the unfilled 23 percent teaching vacancies and use that money to raise the salaries of the rest of the teachers.

Is that what's going on?

MS. MONTES: I'll let Frank fill you in on the detail, but essentially we have had a challenge filling our teacher vacancies. And obviously, in order to fill our classrooms, we have to have teachers in place. So, we did submit a proposal to increase the pay for teachers to establish a level of parity with our Department of Juvenile Justice and with the local salaries in the local school districts.

And Frank can give you the details on where we

are.

MR. RUSSELL: Yes, and we did fund that out partially from our vacancies at this point.

CHAIRMAN PERATA: How is the recruiting going with the higher salaries? Does it make a difference?

MR. RUSSELL: We don't know yet because it's in the Governor's budget for the budget year.

CHAIRMAN PERATA: Of course. You're just sort of in the praying stage.

MR. RUSSELL: We're optimistic, and we think at least --

CHAIRMAN PERATA: Yes, but you've already compromised yourself. You say you're a natural born optimist. You've been an optimist for 40 years. You're incorrigible.

[Laughter.]

MR. RUSSELL: I've heard that before.

CHAIRMAN PERATA: So, that was really the way. I mean, there's a certain logic to what you're saying.

Let me ask you at this juncture, what's the relationship between the programs that you're responsible for and the custodial staff, the people who walk the beat inside the prison? What is your relationship? How important are they to what you do?

MS. MONTES: They're absolutely essential. If we don't have the custody officers in our educational program areas, in our vocational program areas, in our drug treatment areas, it's very difficult to provide a program.

They're responsible for escorting inmates from

their housing unit to the -- to the actual program. And then we have officers that supervise the program areas as well. Where we have volunteers, we also need security officers, or correctional officers, rather, to provide a level of supervision there as well.

CHAIRMAN PERATA: So, they would be as important in the "R" part of this as the "C" part?

MS. MONTES: Absolutely. We can't do it without them.

CHAIRMAN PERATA: Sometimes we wonder.

Do you want to jump in? Otherwise I'll be talking all day. You have that pensive look on your face.

SENATOR PADILLA: I try to keep it on all the time.

[Laughter.]

CHAIRMAN PERATA: It's working.

SENATOR PADILLA: Just a question to follow up on the conversation with both of you that we had in my office about the level of participation in some of these programs.

I know there's been a low level of programing, yet we're sometimes surprised by the high levels of recidivism. It's something that we shouldn't be surprised about.

How do we help address that? I know it's a big issue in terms of capacity, in terms of recruitment of teachers, and what not.

What are the specific plans we're implementing here?

MS. MONTES: Well, let me first approach that on

a couple of different levels, and then I'm sure Frank will want to add to that.

The recidivism rates in California are extremely high, and there are number of reasons for that. Part of how we are -- we are planning to attack that is to provide a continuity of care that begins when inmates first arrive in our institutions.

Our plan is to conduct risk and needs assessments as soon as they arrive at the reception center, and we're very close to being able to do that. We're going to be implementing that at four reception centers in June this fiscal year.

But the idea is to do those assessments there. Then we have a pretty good idea of what the specific programing needs that offenders need. And so, we'll place them in those programs while they're in prison, providing that the program is available and there's space for them.

SENATOR PADILLA: And therein lies the rub.

MS. MONTES: That is correct.

SENATOR PADILLA: Second question, is this for all people being processed, one through four, or just --

MS. MONTES: Well, we will start at reception center, and it will include all levels of offenders. The risk assessments will include everyone who comes through our reception center.

So the vision, then, is that we would provide programing tied specifically to their criminogenic needs. And prior to their parole, they would receive another assessment that would then determine what their parole plan will be.

Now, Parole is already doing those assessments now.

And what is critical here is that those assessments will help us determine where to put the right inmate in the right program at the right time. And that's critical right now, because we don't have a systematic approach to -- Senator Perata asked me to be candid -- the truth is, we have some of these component parts in place, but it is not really a systematic approach, because a lot of this information has not been available to people making the decisions as to who goes into what program. We have established waiting lists.

If an offender comes up before a classification committee, and they are at the sixth grade reading level, they should automatically go into adult basic education and work on their literacy level, and get them their high school diploma and/or their GED. That should be the process, but it doesn't necessarily work that way.

We might also, when they come before a classification committee, we might have a porter job to help, you know, do janitorial work. Or, we might have a vocational vacancy in a mill and cabinet program. That's what happens to be available, and the inmate might just be placed in that program, when in fact, they should be in school.

So, what we plan to do with these risk and needs assessments is, have that available to people, to our staff, when they go through classification committee so we can make much more reasoned and intelligent placements, and make the best use, most efficient use, of our limited programing resources.

SENATOR PADILLA: And whether it's the result of an assessment or after a parole hearing, let's say, where they've been directed to participate in a certain program, there's too many instances where the program is not available, or there's no capacity for them at the institution in which they find themselves.

MS. MONTES: That is correct. That's one of our -- that's currently one of our systemic problems.

But part of what we're trying to do now is to activate programs where there is space available.

And I think I mentioned earlier that we lost about 300 vocational programs in the '03-'04 budget cuts, and we're in the process now of reinstituting many of those vocational programs where that space is still available to us.

SENATOR PADILLA: A question about San Diego specifically. This is result of SB 618 by Senator Speier back in 2005, which allowed for three counties to launch multi-agency plans to prepare nonviolent felons to be better prepared for when they're transitioning back into the community.

What's the level of participation in San Diego at this time?

MS. MONTES: Well, we actually began implementing that program in March of this year. The plan was for San Diego County to feed inmates to the institution, six offenders per week, so they would ramp up at a rate six per week. And we currently have 20 inmates in the program. Four of them have actually already arrived in prison.

Let me back up for other Members who may not be as familiar with 618. SB 618 allows the local county to do all of the assessments of our offenders. So, they would not go through our normal reception center processing. They would actually arrive at our reception center already with a specific plan that would address whatever their specific needs are.

SENATOR PADILLA: Is it the same assessment that we conduct?

MS. MONTES: They're actually already -- they've already started the COMPAS assessments. They are doing that. They were also --

SENATOR PADILLA: We're using two different standards or types of assessments?

MS. MONTES: No, it'll be the same assessment. It'll be the same instrument. We're using the same tool.

So, they would conduct all of the -- essentially, all the reception center processing would be done locally, and they would arrive in prison with a plan, with a program plan that has been agreed upon by the local DA, the local prosecutor, the local judge. And they're delivered to us with a specific program that we have to deliver to the offender.

So, there's two prisons that are involved. CIW and RJD Donavan will be the prisons that will house these participants.

SENATOR PADILLA: There's currently 20 people enrolled?

MS. MONTES: Right now we're just ramping the program up. The plan is to have 264 inmates in the program by

fiscal year end. I anticipate it'll be much sooner than that because I've talked to the county about weeks where they fall below their six-per-week. The following week they've committed to increase the number so that we make up for lost time.

SENATOR PADILLA: And the mechanism for reporting back or evaluating effectiveness of the program?

MS. MONTES: We have specific performance metrics which include not just process measures, meaning how many people are in the program, how many are participating, how long do they stay, et cetera. We're also looking at outcome measures. We're going to track --

SENATOR PADILLA: Who does that get reported to, when does the Legislature specifically get an opportunity to assess it?

MS. MONTES: We initially started a weekly reporting process. It's now moved to a monthly reporting process.

The Legislature will actually -- let's see. We submitted a March -- I think just recently we submitted a report to the Legislature that had the performance metrics and how we're doing. It's been a very recent submittal to you.

SENATOR PADILLA: And the reasons are two-fold for asking that question. One is, based on the metrics, if it's not working, why continue it? Why seek to replicate it?

But if it is working, then obviously the challenge is how we expand upon that into other areas.

If it's working in San Diego from a best practices standpoint, it's something to be replicated elsewhere.

MS. MONTES: That's our plan. We're planning to evaluate every program that was funded through the recidivism reduction strategies. We're attaching an evaluation to each plan so that we can have both periodic and then long-term results so we can make a decision about where we spend our programing dollars.

SENATOR PADILLA: And my last question, in the current fiscal year budget, there was line item of $900,000 appropriated to bring together a group of experts to advise the department how best to deliver these types of programs and strategies.

Can you give us an update on the status of that working group?

MS. MONTES: Yes. The panel has met several times now. They have divided into two subcommittees. One subcommittee, which is headed by Dr. Joan Petersilia, is responsible for conducting an evaluation or an assessment of existing programs that we have in prison and on parole today.

In the short time that they had, they won't be able to complete an evaluation of every single program that we have, but they're going to make substantial progress and report to the Legislature on June 30th, if not before, on what their findings are.

The second subcommittee that is being chaired by Joe Lehman who is former Secretary of Departments of Corrections actually in a couple different states, their charge is to help us develop a program model for California prisons and parole.

I'm very excited about that, because I think that

they're going to provide us with some recommendations that will include best practices, as you've suggested, and we're going to learn from the results of other states. And hopefully, that will give us some momentum and catapult us to a point where we're doing some substantial work here in California. I mean, I'd love to see other states come and see what we're doing in California.

We at one time, I think I mentioned to you, we were at one time the envy of other states in terms of our correctional practices and programming. That's not the case today, but -- but I believe it's possible for us to gain that status and that stature once again. It's not only possible, it's very doable in a relatively short period of time.

SENATOR PADILLA: Thank you very much.

CHAIRMAN PERATA: It's contagious.

[Laughter.]

CHAIRMAN PERATA: I'm not a great fan of panels and study groups, and anything like that, but I was just informed that Joan was heading up a similar panel in 1988. So, let's be honest. We do our great out pitch -- it's a baseball term. I want to do that for my baseball playing buddy over there -- we can't just stand there. Do something. We oftentimes empanel experts.

And I know Senator Machado's very frustrated about the way this is being administered.

It occurs to me that you need a systems designer. I mean, this is like picking up mercury in your hand, to go along with my other smoke analogy.

You know, if you do intake, and people are usually moved on the basis of public safety. That's the way custodial decisions are made. So, I don't know where a program fits in, if at all. And yet, if we're going to be talking about recidivism and trying to get this number down, then it would seem that it has to play an integral part.

But unless you have an overall systems design, I don't know how in the hell you can ever pull it off. Talking to Lord Jesus, maybe.

And the fact that we may have been the envy of some place before, but now we can't get anybody to come to work in the system at the highest levels because it is such a morass.

So, I'm not saying with any sense of confidence or personal responsibility to either of you that you should be able to affect this. In fact, if you have to steal money from vacancies to pay the teachers that you have, to keep and retain them, you are already summarily falling behind.

So, none of this is very encouraging from those of us who are talking about the "R" in the Corrections Department.

But, you know, to not have an integrated system that allows the appropriate emphasis and allocation of funds to that part of your part of the world -- and this is rhetorical; don't answer it because you'll get confirmed and then get fired.

[Laughter.]

CHAIRMAN PERATA: I know that doesn't happen.

It seems like an impossible task.

Be that as it may, let's go to the literacy. It would seem that if I were running a system, and I have people -- one thing that my district does is, we are a pretty good contributor to your jobs. We send quite a few people to prison in our communities.

And then, you return them in pretty much the same condition that we sent them to you, or worse.

So, it seems to me that if the gateway skill in life is literacy, that even if we're going to teach people a little bit about self-awareness for victims, and they have problems with substance abuse or alcohol, but it would seem that we would be wanting to put a huge emphasis, regardless of whether it's academic or vocational training, on literacy.

Some of the most violent kids that I taught were kids that were desperately afraid of being found out that they couldn't read. And they became discipline problems, which means that the guards are the ones that ultimately pay the price.

Do we have any overall program, literacy program, for all of those who fall, let's say, below the tenth grade? Even that won't get you very far. Do we have any system-wide program to do that?

MR. RUSSELL: Yes we do. As a matter of fact, that's one of our top priorities. When you talk about whole spectrum, from basic literacy all the way through college, we try to emphasize the lower levels.

CHAIRMAN PERATA: How is that? Are we staffed to do that? How does that work?

MR. RUSSELL: We have a certain number of staff,

and we have the ability to allot them according to the needs at each of the institutions.

I suspect that when we are able to do the good assessment in the reception centers, and the follow-up, and so forth, that we're going to be able to feed those folks into those programs more systematically. That's our plan.

CHAIRMAN PERATA: I know a lot of prisons, the literacy programs are staffed by volunteers because there's not enough --

MR. RUSSELL: No, I don't think such is the case in our prisons. We actually have staff to do that.

CHAIRMAN PERATA: Enough staff?

MR. RUSSELL: We have vacancies, you know, that we need to fill. So, there's always that issue as well.

What we try to do is look at the waiting lists, and put the resources where the waiting lists are, and where we can hire people, and where we have the space.

CHAIRMAN PERATA: I feel silly even asking about technology. You just don't have it. I mean, if you can't hire people, it's kind of hard to be spending money on it.

Do you have a budget for --

MS. MONTES: For technology?

CHAIRMAN PERATA: Yes. At what level?

If you have a computer, what software is driving it?

I know nothing about these questions, but I do know that a 1988 Windows would not be contemporary.

MS. MONTES: No.

CHAIRMAN PERATA: And I do know that I fear people are being trained on systems that no longer exist, which would not only be frustrating, it would piss me off if I got out and had that.

MS. MONTES: I think that's one of the values of actually getting out in the field, walking through the prisons, and seeing what exactly it is that we're delivering.

And both Frank as I have spent quite a bit of time out in the institutions. We were actually amazed to find that there were some outdated software being used.

But that is one of the emphasis of our vocational program this year, is to push out quite a bit of state-of-the-art software for our officers and related technology programs.

Am I getting at the question that you had? Or are you talking bigger picture technology, like IT infrastructure?

CHAIRMAN PERATA: I have to be honest with you. I don't think you can answer the questions that I have because I don't think -- I mean, God bless you for what you're doing, but what a hopeless -- this is very depressing. This really is. I mean, you know, it's hard to even figure out where to start.

But all I know is, and I've said this before from this dais, I'm a great believer in redemption, but you've got to have a running start here somewhere.

I guess I could ask you, how much money would it cost just to be up to full strength to provide the various programs? That's a lot of money; right?

MS. MONTES: Well, we actually are spending quite

a bit of money right now.

CHAIRMAN PERATA: That's not what I asked. We spend. It costs us a whole lot of money to keep somebody in jail.

MS. MONTES: True.

CHAIRMAN PERATA: And at 70 percent recidivism, we are simply wasting a lot of money.

So, anything that you can do on your end to improve it would have manifold benefits. Businesses, I've heard, make business decisions based upon things like this. What an idea.

So, you're spending quite a bit of money, but just give me a rough idea, how many vacancies do you have, that you've got approved but vacant?

MS. MONTES: Teachers.

CHAIRMAN PERATA: Anything, all over the whole spectrum of what it is that you do with the "R."

MS. MONTES: We have close to 300 teacher vacancies alone.

CHAIRMAN PERATA: All right.

MS. MONTES: We probably are -- in drug treatment, we have some vacancies, although it's not as substantial as in the teacher area because we use a number of peace officer classifications there, and we use a lot of contractors to provide drug treatment.

So, I think the biggest area of vacancies, actually, is in our teachers, in our teaching profession.

CHAIRMAN PERATA: Okay.

Roy?

SENATOR ASHBURN: Thank you, Mr. Chair.

Let me ask about $900,000 that was put into the budget a year ago to hire experts to take a look at programing.

Do we have anything to show for that?

MS. MONTES: Well, we will. They have a report that's due on June 30th to the Legislature.

The full committee is meeting next week, as a matter of fact, for the third time. They've had a number of subcommittee meetings. We met initially in December at Delancy Street. We met again in Long Beach in February. And we have another full panel meeting next week here in Sacramento.

We will be reviewing the draft report in April and should have a fairly substantial final draft report probably in late May, and it's due to the Legislature June 30th.

SENATOR ASHBURN: And the scope of work of these experts is across the full range of programs that ought to be available for inmates?

Describe for me what it is that they're going to be producing for us.

MS. MONTES: Okay. Well, they were asked to, and they are going to be responsive to, the Legislature's request to identify the current amount of the programing we're doing in California prisons and parole. And then, identify which of those programs are likely to have an impact on recidivism. And then the final question is, what is the gap -- getting to Senator Perata's question -- what is the total need? What does that look like? What would it cost to deliver the program

that's needed in California prisons and parole?

That's the ultimate answer.

Now, they're not going to be able to provide a full response to that question, in large part because the amount of time. They haven't been able to assess all of the programs yet, but we're going to get a pretty complete picture of everything that's out there. They will assess a number of the major programs we have in place.

And once we have a good sampling of these COMPAS assessments of offenders coming into prison, they will be able to make some projections as to what our total program need is. So, I'm optimistic that we're going to be able to have that information.

So, what I'm proposing to do is keep the panel on board beyond the date that the initial report is due to the Legislature. And they're committed to continue to work with us.

And as I said, there is also a second committee that is working on a program design. They are -- we are going to have a design, Senator Perata, for programing in -- for our California prisons.

SENATOR ASHBURN: In your mind, you've spoken to two panels, committees. And Senator Perata described it in different language, which was like a systems design.

Are these just two elements of an overall system design, or do these two together constitute what perhaps Senator Perata was describing?

I agree with him. It seems as though we do everything on a piecemeal basis. We kind of patch something

together and hope that it'll work, or sometimes I think pretend that it's going to work.

So, do the two programs, the two tasks that are underway, do they constitute what Senator Perata was alluding to?

MS. MONTES: Yes. We will have a full systems design actually, start to parole discharge.

SENATOR ASHBURN: When will we have that?

MS. MONTES: June 30th is the date the report is due.

SENATOR ASHBURN: June 30 of this year. Mark the day on the calendar.

MS. MONTES: We will have a design. It'll include an entire logic model of what you do from the date the offender arrives, throughout their prison stay, transition to parole, parole programing, and discharge.

CHAIRMAN PERATA: Excuse me for interrupting.

Do you have any guards or parole people on these panels?

MS. MONTES: Do we have any --

CHAIRMAN PERATA: Guards or parole officers?

MS. MONTES: On the expert panel, no.

CHAIRMAN PERATA: Does it strike you a little odd that you'd try to come up with a system design and not include the gasoline and oil?

MS. MONTES: No, but -- well, the expert panel is derived with -- there are practitioners, academicians, researchers from --

CHAIRMAN PERATA: It's just making my heart flutter.

MS. MONTES: But once we have a report in, a good draft report in May, we're going to run it through several different groups.

We'll have an opportunity to review it, including legislative staffers, to give us some feedback.

CHAIRMAN PERATA: I have to tell you respectfully that what I had in mind, this ain't going to do.

SENATOR ASHBURN: Mr. President, it strikes me that if June 30th is the day that we're going to have the delivery of this product, that we would want to convene a hearing on that, and let's lay it out.

And if it's adequate, and it does as has been described, that's good.

If not, let's identify what's still deficient.

I mean, I'm with you, frankly, in terms of what appears to be a much bigger task.

Let me talk about and ask you about the pre-release classes. I understand that there are 8500 inmates eligible for pre-release classes. That's different than education and training while in the institution. These are people who are about to emerge.

And yet, there are only 1255 inmates that are currently in those classes.

Why? What's going on?

MR. RUSSELL: I think the big limit on that has to do with the fact that they're voluntary. At this point, we

are not requiring that folks go to these classes.

There are a lot of disincentives to participation, such as they would have to give up -- many of them would have to give up a paying assignment in order to do this. And our academic, our educational and the other kinds of treatment programs that we offer don't have those sorts of pay numbers associated with them.

So, motivating folks to want to participate in pre-release is --

SENATOR ASHBURN: Has it ever occurred to the Department to come back to the Legislature and say that there ought to be no disincentive for an inmate to participate in a pre-release program, rather than just, on a wish and a prayer, hope that a few dozen show up, and then we're going to kick them out into society?

Does anybody ever come back here and say there's a disincentive?

MR. RUSSELL: I think you'll be hearing more about that in the near future. We do have initiatives under way to ask for resources for that sort of thing. I think it's a good suggestion.

SENATOR ASHBURN: I don't know that you could make it mandatory, but certainly if it's a matter of dollars and cents for somebody to either participate or not, that's something we can address.

MR. RUSSELL: The expert panel is likely to include, I believe it will include, a suggestion for us, a number of possibilities and an overall suggestion, a

recommendation of a system of incentives that we would employ as part of the overall program delivery. They've been talking about that, and some of the other states have been doing a lot more than we.

SENATOR ASHBURN: Senator Padilla asked about the San Diego pilot project.

Is there anything going to come out of that that's beneficial?

As I understood, it was to be a multi-agency, kind of take all the resources that are out there and focus them, and actually do something.

MS. MONTES: Well, I've seen one the most substantial partnerships in San Diego that I have ever been involved with come together where -- where we have all the local agencies, local government, coupled with the Department of Corrections, working together toward developing a model that works. Where you have the public defender, the DA, the judge sitting together and agreeing, after looking at the assessment of an individual. And deciding, you know, "Based on all the information, universe of information we have, we think you need to spent time in prison doing X, Y, and Z. And when you come out of prison, we will then do another assessment, and we will assist you in getting the community services that are necessary for your success."

And the community partners, I have been so impressed with that community collaborative in San Diego.

So, it may be something that can be replicated, and that's what we want to look at.

SENATOR ASHBURN: How does that fit with what the panel of experts are looking at?

MS. MONTES: Actually, 618 would ultimately be one of the projects that they assess. There's an evaluation committee, and there's a program design committee as well.

SENATOR ASHBURN: As I understand it, the legislation by Senator Speier, former Senator Speier, provided for three counties.

MS. MONTES: Yes.

SENATOR ASHBURN: Is it only San Diego that's undertaken this?

MS. MONTES: We started with San Diego, and are hoping to perfect the model, the design, the staffing, before we replicate it elsewhere.

SENATOR ASHBURN: Do you have enough money, and a clear enough mandate, to do what needs to be done?

MS. MONTES: I believe so. Not money, but we have a very clear mandate.

SENATOR ASHBURN: So, you don't have enough money, so who's going to tell the Legislature and the Governor how much money more is needed?

MS. MONTES: I believe in a relatively short order, like within the next year, we will be able to give you an overall plan on what it would take to be truly successful in implementing rehabilitation and re-entry in California.

SENATOR ASHBURN: Thank you.

CHAIRMAN PERATA: Gilbert.

SENATOR CEDILLO: I don't have much to add to the

previous questions, but I am a little concerned. I have a lot of concerns.

But let me ask you, I didn't hear you talk much about discharge of planning. I heard you talk about the whole process of moving people and then discharge. I didn't hear you say anything about discharge planning.

I'd like to hear about that and more about parole. You talk about these courses with seats for 8500 people, and only 1200 are participating.

I'm interested. I know there's disincentives, but give me a little bit of the content of that curriculum? What benefits, and the choices they have to make to take the course?

What did you say the disincentive was?

MR. RUSSELL: One of the disincentives is that they would have to -- many of them would have to give up their paying assignments and go into a situation where they receive no income.

SENATOR CEDILLO: Your response to that?

MS. MONTES: In terms of discharge planning, are you referring to when an offender is discharged from parole?

SENATOR CEDILLO: From your institution.

MS. MONTES: From the -- when they're released from the institution.

SENATOR CEDILLO: Correct.

MS. MONTES: Well, in terms of pre-release planning, what currently happens is about six months prior to their release, the parole program is actually conducting these

COMPAS assessments, where they sit down, face-to-face, interview the offender that's about to be released. They look at a number of factors: What are their education needs? What are their housing needs? What are their drug treatment needs? What are their addiction issues? Is the family involved in their reunification, and so on and so forth.

And they develop an actual assessment that is then provided to the offender. And it identifies in there all the different kinds of community resources that would be available to them in their home community when they parole.

They are also given a specific date and time as to where it is that they're to show up for what is called a PACT meeting. And at that meeting, there are a whole variety of community providers are there basically to recruit them, to offer their services to them as identified in their parole plan, their assessment plan.

Another thing that's going on now, and this is fairly new, it's one of our recidivism reduction strategies, is we're hiring social workers to work in the prisons to provide what we call pre-parole benefits, so that if an offender is a veteran, let's say, or they are eligible for Social Security or Medi-Cal, or other kinds of services, driver's license is a critical one, in that pre-release planning, pre-parole benefits project, their job is to make sure that they leave the prison with their Social Security card, with their VA benefits, with their Medi-Cal, et cetera, et cetera, so they don't have to struggle with that once they leave prison.

Driver's license is -- is a challenge for us.

There was a time when DMV used to come regularly to our prisons and take pictures, and start the driver's license or California ID process.

I don't know if it's because of budget cuts or other reasons, but we really struggle to get DMV to our institutions today. I know we're starting a pilot up at Folsom Prison for -- where DMV will be coming to the pre-release class, and the offenders will get their driver's license there.

But that's, you know, it's just a drop in the bucket. It's a pilot that we're implementing.

SENATOR CEDILLO: Is there cash or housing vouchers?

MS. MONTES: When the release -- when the inmates are released, they do receive $200 of gate money when they are released to the community. If they don't have family or friends to pick them up at the institution, or some community provider to pick them up, then they generally are taken to the local Greyhound bus station and find their way home that way.

SENATOR CEDILLO: So, you evaluated this on effectiveness?

My concern is this. That's nice that we take somebody out the door, out the gate. How do you do your evaluation and oversight to make sure these things get connected and that they're ongoing?

I'm concerned particularly about housing.

MS. MONTES: That's a critical --

SENATOR CEDILLO: I'm concerned about housing people who are leaving and becoming homeless, not receiving the

adequate drug or alcohol treatment, and not having sufficient resources. Two hundred bucks, it's a lot, but it's really not very much.

MS. MONTES: I share your concern about housing. We have a number of parolees who are either homeless or transient.

And we have put in place just this year about -- well, a total of 20, but not all of them deal with the issue of homelessness, but a total of 20 grants. They're intergovernmental grants with local communities. A number of them went, in fact, to Los Angeles and other locations to provide services for parolees when they leave the institution.

But that's a real critical need, because they leave the bus. They've got $200 in their pocket. If they don't have a place to go, and they don't have services, that becomes a recipe for failure.

SENATOR CEDILLO: What does $200 buy you in terms of housing?

MS. MONTES: Not much. Not much. That's why I said, we've put a number of programs in place just this year to expand the multi-service residential centers. We've got a number of those that are coming up throughout the state.

And at those multi-service residential centers of parolees who don't have is a place to go, don't have housing, can't find --

SENATOR CEDILLO: What percent are those who leave without --

MS. MONTES: That I don't know. I know that

parole has been reported to us about three-tenths of one percent of their population is homeless at any given point in time. That's one of the things that they report through our regular COMPSTAT process. And it helps us identify where the needs are; where we need to put our resources.

It's a concern that I have. I share your concern about that. Homelessness creates a lot of problems because -- well, usually the offender doesn't have just one problem. It's usually a multitude of issues that he or she is facing once they leave prison. So, that's why those community connections are so critical.

SENATOR CEDILLO: Right, so there has to be this very firm hand in the transition that takes people all the way to the other end so they're connected, and received, and integrated. That's a very large order.

MS. MONTES: That is correct. I agree with you.

SENATOR CEDILLO: Tell me about the contents of these courses before they're released?

MR. RUSSELL: The pre-release classes include such things as a discussion of the parole process, what you can expect in terms of the regulations; how to relate to a parole agent. The things a parolee can do that would promote a successful parole. How to stay in touch, and make sure you stay in touch with the parole agent, and so forth.

Answer a lot of questions people have about the parole process. We talk to them about handling money. Where you can find a place to stay if you need one. Talk about the

community resources and such things.

So, we talk about how to get an ID card.

So there's -- we have a set curriculum. Over this past year, we implemented a standardized curriculum across all the prisons. It's implemented in similar fashion in all of them.

SENATOR CEDILLO: Thank you.

SENATOR DUTTON: Couple questions. Good afternoon. Just a couple of questions.

You've talked about risk assessment and needs assessment of inmates to determine the proper type of programing that would be needed.

Do you feel that everyone can be rehabilitated?

It goes into your assessment, because my next question's going to be, what is it that you -- and just a couple of things. I don't want a long, drawn out deal.

I think you can give people the benefit of the doubt, I agree. What is it that you look for? When you're trying to make that assessment, how can you tell if somebody really sincerely regrets what they've done, versus the ones that are just playing the game?

MS. MONTES: Well, first of all, I believe there's a percentage of the population that may be truly psychopathic and would be very difficult to change. But that's a very small portion of the population that we deal with.

I do believe that people are capable of change, given the right resources, the right attention, and the right program in most instances.

The assessments that you're asking about, it's a very empirical scientific process, so it's kind of difficult to fool the system. And it comes at you in a number of different ways, a number of different questions.

So, I'm not sure if that's getting the at your question, but right now we have nothing. I mean, we have very little -- I shouldn't say nothing. We have very little information --

SENATOR DUTTON: That's what I'm trying to get around to. I appreciate what you're telling me, but what I'm trying to get a handle on, I've got extreme budgetary problems that we're dealing with. And I'm trying to figure out, where's the best place to spend my limited financial resources.

And I don't mind helping somebody to become a productive member of society, because that really is to our benefit, and I think it is cheaper in the long run.

But also, I'm trying to figure out, is there a way, and maybe it's not an absolute science, but is there a way? Do you have something?

Is it just a gut feeling that you have at the end of the day that says, "Yeah, this person, we can work with this person. They really want to become a good productive member of society." Or, "Naw, probably not. Let's not waste time or efforts."

I mean, is there something, or is it just what your gut's telling you?

The question's to both of you.

MR. RUSSELL: The literature tells us that in

fact we can make a difference with effective programs applied properly.

SENATOR DUTTON: How do you determine who the candidate is?

MR. RUSSELL: A lot of that, of course, is self-selection. We know that we don't want to spend the preponderance of our resources on those folks on the other end, the ones who are going to make it anyway. So we're going off to the ones who have moderate to high risk to fail already. That's the ones we can make a difference with.

And some of those folks self-select. If they really don't want these things, they can get themselves locked up in such a way that's very hard to get them to programs. Some actually make those choices.

But across the country, in study after study, we find that facing a whole group of these folks, that we're able to make a significant difference using certain kinds of these effective interventions.

But to be able to say reliably, go to a certain person and say, "We're not going to bother with you because we know you're never going to change," because we could probably find a lot of guys that might just agree to that, and say, "By the way, raise your hands, fellows. Which one of you guys are willing to change?"

You might see, you know, maybe they won't all raise their hand, but it turns out, there's this -- you used the term earlier, rehabilitate. Can you rehabilitate everyone?

That's an interesting question. It's kind of

like, at what level? Maybe you don't take them all, all the way.

But wouldn't it be great to take some of the others some of the way? Maybe we get more time from people; maybe they do less damage. Maybe we're talking about harm reduction rather than a complete rehabilitation.

SENATOR DUTTON: With regard to re-entry, it would seem to me, and I don't have the solution to this, and I kind of maybe look to you and maybe other people, maybe the panel can come up with something, because it's one thing to provide them with some additional coping skills, and things like that, but they also need employment. And we talked a little bit about housing.

I think employment's going to be a really tough thing. Part of my concern, and we discussed it a little bit, with some of the vocational training, there's no point in training them for a position or for a skill that they are not going to get employed with.

In other words, some areas that require bonding, surety bonding, things like this.

We've got to face the reality. There's no point in wasting dollars there.

Is there any kind of program? That to me has to be obviously part of the assessment process. Do we have relationships with people in the construction trades, or some place where we can actually have a viable skill to be able to teach them that they can earn a living at, and an employer willing to give them a chance?

MS. MONTES: Well, employment -- we haven't talked much about employment today.

But absolutely, that is one of the most critical aspects of success on parole. And we do have examples.

But before I point to a specific example, I wanted mention that our vocation programs, our emphasis today is to look at programs where there are employers willing to hire parolees.

And number two, we're looking for vocations where there is -- there is work available, and employers willing to hire them, and where they can make a living wage. Because we want them to be able to become self-sufficient, to pull their families back together, support themselves and their families, and be successful.

But I want to give you an example of a program we have up at Folsom Prison that we're replicating at other places now, the carpenter apprenticeship program is one that we've supported as part of our recidivism reduction strategies. It's a wonderful model, actually, where PIA is training offenders, the entire carpentry apprenticeship from cradle to grave. I mean, they're learning construction skills from demolition, to laying the concrete slab, to framing, painting, carpeting, the whole nine yards.

And they have a partnership with the local Union 46, where the union will actually embrace them when they parole and assist them to find work. PIA will pay for their tools, which are not cheap.

And so, they're ready to go. They leave the

prison with their apprenticeship in hand, relationships with the local union, and their tools ready to go.

But the other aspect about, you know, they might have some housing issues when they leave prison. They might have some addition issues they're still wrestling with. So, that's where we have assisted PIA in making sure that those offenders that are graduating from this program have those wrap-around services available to them as well.

SENATOR DUTTON: One final thing. Go back to the money that the Legislature allocated for the study and so forth.

Something that was said, I just want to make sure I understand, that the group of experts that we assembled to make recommendations and so forth, nobody within that group has any type of corrections experience or background?

MS. MONTES: Actually, quite a few of them do. There are a number of practitioners, they're just not current.

I thought the question was whether there were current correctional officers or staff on the panel. The answer to that question is no.

SENATOR DUTTON: Not currently employed, but they do have some kind of corrections background.

MS. MONTES: Absolutely, have a long history. The practitioners have a long history of correctional experience.

SENATOR DUTTON: That's the reason I asked the question for clarification.

Thank you.

MS. MONTES: Thank you.

CHAIRMAN PERATA: I noticed on the organizational chart, PIA is not under your jurisdiction.

MS. MONTES: No, it's not.

CHAIRMAN PERATA: Yet that program you just described was a PIA program.

MS. MONTES: Yes, it is.

CHAIRMAN PERATA: I'm sure there is a reason for this, that it's not under your jurisdiction?

MS. MONTES: Well, there's a lot of programs under the recidivism reduction strategies that don't report to me. But we are supporting them, and we're funding them. We're monitoring them. We're evaluating them.

I work very closely with Chuck Patillo from the PIA, and in supporting what he's doing there.

CHAIRMAN PERATA: I just noticed that there wasn't any little either a complete line or a dotted line connecting.

MS. MONTES: It doesn't stop me from working with him.

CHAIRMAN PERATA: No, I know. Having been in the bureaucracy for quite a while, I know how important those little lines are.

Let me go back and ask a couple of follow-up questions.

One of the things that we've been dealing with here to a high level of frustration is the Board of Parole. And we hear that many times a person is denied parole because

they're not getting the programs that they need.

Which leads me to the question, what kind of communication do you have with the parole so that you're making available to these lifers what they need in order to be eligible?

MS. MONTES: Well, this is an area where we need improvement, to be very frank with you.

I have talked to John Monday about the need for us to have standing meetings. We meet every other week now, but they're very high level issues. But we do need to have some targeted discussion about where we place lifers, and how we make -- how we provide access to program. What is the right level of programing to provide them.

It's a little bit of a conundrum there. Lifers have to have a program, demonstrate that they've been in a program in order to get a date, and yet there is no program available to them in a lot of the institutions.

CHAIRMAN PERATA: You've got it. That's exactly the problem.

Would you like to call a meeting and talk about that with these guys? I'm being serious.

MS. MONTES: We are. We have actually scheduled a meeting already just to begin the -- begin the dialogue.

CHAIRMAN PERATA: Begin the dialogue.

MS. MONTES: Well, it is. It's a big problem.

CHAIRMAN PERATA: Maybe design a peace table in Paris?

MS. MONTES: It won't just include -- I want you

to know it won't just include myself and the --

CHAIRMAN PERATA: I'd be happy with just you. That's fine. There ain't nobody else here today.

[Laughter.]

MS. MONTES: No. My point being that I want to include the Division of Adult Institutions as well as the Division of Parole Operations.

CHAIRMAN PERATA: You collect all the people that you need, but would you tell me -- actually, tell Nettie when that meeting is scheduled. Then I'd like to know how it went.

MS. MONTES: Sure, will do.

CHAIRMAN PERATA: Great. Thank you.

How many teachers are in the whole system?

MR. RUSSELL: We have about 1300 currently.

CHAIRMAN PERATA: So, you're down 300 out of 1300. Do you have 1300, or you'd like to have 1300?

MR. RUSSELL: No, we actually have about 1600 positions.

CHAIRMAN PERATA: All right, and you've got 1300, and these are all full-time or the equivalent of full-time?

MR. RUSSELL: It's the equivalent, yes.

CHAIRMAN PERATA: No worse than some of the schools in my district.

You know what? You should check with the CTA. They can help you with the class size reduction.

[Laughter.]

CHAIRMAN PERATA: Well, I'm exhausted. Do you need a break?

We're going to take a brief break, ten minutes.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: I'd like to reconvene and ask if there's anyone here in support of either of the nominees? Please feel free.

Oh, Senator Cedillo, sorry.

SENATOR CEDILLO: A few things came to mind in the interim.

There was this talk about dialogue. I just want to get back to a question that the Pro Tem asked.

Just let me ask you, you're third person down to the org chart, from what I see. I just want to talk to you, if I could ask the status of the MOU with the people who do the work there, correctional officers. What's the status of the MOU? With the bargaining unit?

MS. MONTES: I don't know, sir.

SENATOR CEDILLO: What is the importance of that to you, for you to be operational, to do your work?

MS. MONTES: The importance of the correctional staff?

SENATOR CEDILLO: The correctional staff, and of them having a settled collective bargaining agreement.

MS. MONTES: Well, I think it's critical. If we don't have correctional officers in our facilities, we cannot run our programs. So, they're absolutely essential to the work that we do.

SENATOR CEDILLO: I'm happy to hear you say that.

The other question is, I looked at the panel, and it just seemed to me, and I think the Pro Tem asked this question, but I want to be more specific.

I don't see someone from their organization. And it just seems to me, having worked -- I used to work with Los Angeles County, which is big organizations, in multiples: the health care system, the probation department, the library, et cetera. So, we were always evaluating under budget pressures, under community pressures.

But it just seemed to me that the county worked best, and was able to implement paradyme shifts, as we're trying to do here, more effectively when they incorporated the collective bargaining agreements, or rather the collective bargaining units.

So, to what extent do you intend to incorporate the bargaining units in your plans? You've laid out a whole series of plans.

MS. MONTES: In our review?

SENATOR CEDILLO: In your planning and in your execution. Primarily in your planning. The execution will take place as it will or won't.

MS. MONTES: Probably the most significant plan is the one we talked about earlier with the program design for programs in prison and parole.

Our plan is, once we have a report ready, to vet that through a variety of different forums. The employee unions would have an opportunity to attend meetings where we share that.

I heard earlier today, I think Senator Ashburn was calling for a potential hearing.

I think the expert panel would actually welcome that, an opportunity really to share with you first-hand what it is that they're proposing. I would love an opportunity to share that with you.

SENATOR CEDILLO: Let me suggest, it seems to me that you place the collective bargaining unit in a kind of responsive position rather than a proactive position.

Senator Ashburn indicates we may have a hearing on this matter, but we've already sat with you and know at least what the subject matter is going to be, and what that's going to look like. But we don't work in the facilities.

It seems to me that you would be best served in presenting this at the front end. Your panel would be best served by incorporating the bargaining unit in at the earliest point possible.

It's just my experience organizationally that to execute any of these proposals and plans, that those who are going to be executing them are allowed to be most effective when they're engaged at the earliest moments.

MS. MONTES: I think that's a good counsel, Senator.

One thing I have done is on my tours to the institutions, I have on a number of occasions invited SEIU to attend the tours with me, so we're both looking at the same -- same programs, same program delivery, hearing the same feedback from teachers, academic teachers, vocational teachers, bridging

teachers at the same time.

And my hope would be that we can come up with solutions that are mutually agreeable to us as well as the collective bargaining unit that's responsible for the teachers.

SENATOR CEDILLO: I would suggest that you'd probably want to integrate all the bargaining units in that process.

MS. MONTES: I hear you. Thank you.

CHAIRMAN PERATA: Same offer, anybody who wants to speak in support?

MR. RAMIREZ: My name is Frank Ramirez. I'm a correctional criminologist by training, undergrad and graduate School of Criminology at Fresno State, and a founder of the community parole program, Community Resource Project, serving as its chairman for ten years.

There's a tremendous amount of challenges. I have some sense for the challenges that Marisela and the department are going to face.

And I agree with Senator Cedillo. It's a very complex problem.

I come really in strong support of Marisela. I know her for a number of years, 16 years with the Department of Corrections. And as we say in the Department of Labor, she has the skills, the knowledge, and ability to do the job.

I'm a strong, strong supporter of her. Thank you.

CHAIRMAN PERATA: Thank you.

MS. FONSECA: Good afternoon. My name is Cindie

Fonseca. I hate these microphones, sorry.

I'm the Chair of Bargaining Unit 3, which represents all the teachers and librarians that work in the Department of Corrections.

We are hopeful that we will be able to work collaboratively with Ms. Montes and Mr. Russell. We are hopeful that we will be able to improve recidivism rates and create safer communities and save the taxpayers money.

Recently, as Marisela mentioned, we went to CCI together, all three of us. And Mr. Russell talked to our inmate students. I've never seen that before.

Ms. Montes talked to our teachers. Sat down and talked to our teachers, okay? I've never seen that before either.

It was very refreshing to see administrators at this level on the ground, seeing what's really going on.

I have found both these individuals to be very approachable and hope that this mutually beneficial relationship will continue.

Our organization does not take a position at confirmation hearings, but we are here, putting a voice to our workers who work behind the wire in support of creating genuine change in the department. I believe that by working together and valuing each other, which I feel like there's a real value placed on staff that I hadn't felt before either.

Thank you.

CHAIRMAN PERATA: Thank you.

Anyone in opposition?

Seeing none, I'd like to thank both of you a difficult job that you've undertaken. I don't think that for the want of trying to get it done, it won't get done, but you need lots of help.

We're going to be hearing from a lot of other correctional administrators, as I mentioned, over the course of the next number of months.

We supported in a bipartisan support for the reorganization, but there are a number of flaws in that. But probably the greatest of which is, the program side needs the most work.

And you are, I think, the stepchild. You may not be quite stepchildren yet. You're running hard, and maybe we can get you there.

The things that are the most troubling is, when you ask for something that is pretty essential, and the Department of Finance turns you down, as an example, on some of the technology things, it's bad enough that you have to sort of struggle through a system that doesn't seem to put a high value on some of the people that do the work. Although, I'm very pleased to hear that the bargaining unit representative from teachers and others in your program think that there's a new day underfoot. I think that's quite complimentary.

But it is a very fractured system. And it's very painful that you'd have to sort of go around with a cup in your hands, on one hand, and then find out that the Department of Finance, or the bean counters, could just turn you down summarily on threshold things like technology.

We're going to be going through, as I mentioned, with Senator Machado continuously, and I frankly don't know how, if you appear before his committee or not, Sub Four?

MS. MONTES: We do.

CHAIRMAN PERATA: But it is very important for you to be as candid there as you've been here about what your needs are.

And I would have you think about the question, if you have 1300 teachers, for arguably 177,000 inmates, then what would be the real number that would be useful, as opposed to the number that you have and the number that you're down.

There's nothing wrong with saying we need this; we have that; we can afford this. At least we're not kidding ourselves. It's not a con.

It's easy to accuse guys on the inside of playing the system, but we con ourselves, too.

I never thought I'd be able to sit around a table with Republicans and Democrats and talk in agreement on how important rehabilitation was in this program, getting people out and keeping them out.

One thing I find, and this is just rhetorical, but I find kind of interesting is that you have a program at San Quentin staffed by volunteers and willing to raise foundation money for its own building on prison grounds. That's kind of somewhere in the sky hook, and yet the department was able to build an execution chamber not only without going over budget, but on a budget that I thought they couldn't do anything with, and they did it without telling anybody. And it's just kind of

ironic.

So, maybe you could find those same people and they could give you all a hand building a few classrooms, or some things like that, because they're damn good. They're really good.

Again, I just want to thank you. I will tell you that as long as I'm here, we're going to spend a lot of time trying make sure that the work that you do has not only the psychic compensations for it, but you have the things that you need to do it.

You're very forthright.

You came back, and that speaks volumes.

So, God bless you in your work, and hopefully we'll be able to give you the assistance that you need.

Just be honest. They can't do anything to you if you tell them the truth.

MS. MONTES: Thank you, Senator.

CHAIRMAN PERATA: You might want to write that down.

[Laughter.]

SENATOR ASHBURN: I'll make a motion.

CHAIRMAN PERATA: If you write it down, don't tell them who said. That'll prejudice it something awful.

[Laughter.]

CHAIRMAN PERATA: Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: You're both on your way. Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:25 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of June, 2007.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

Senate Confirmation
Marisela Montes
Chief Deputy Secretary, Adult Programs
Responses to Senate Rules Committee Questions
April 10, 2007

General Questions

1. ***What are your goals and objectives as Chief Deputy Secretary? What do you hope to accomplish during your tenure? How will you measure your success? Please be specific.***

As Chief Deputy Secretary I envision a California Department of Corrections and Rehabilitation (CDCR) that, upon reception, begins to prepare offenders for successful reentry to their communities and discharge from parole. While under our care and supervision, offenders have access to evidence-based programs tailored to meet their specific needs as determined by objective risk and needs assessments. Programming is enhanced by a correctional culture that supports the mission of offender rehabilitation. Communities are actively engaged in prison and reentry programs. Programs are rigorously evaluated to track progress, ensure outcomes are achieved, and efforts continuously improved. Public safety is improved by recidivism reduction for adult offenders.

In order to achieve this vision, I've set the following goals which I hope to accomplish during my tenure:

1) Expand evidence-based prison programs
2) Expand evidence-based community programs
3) Establish reentry centers for offenders that are within 6-12 months of release
4) Strengthen internal and external partnerships to support offender programming
5) Advance the culture of "rehabilitation" throughout the CDCR

Utilizing a project management approach, a charter will be developed for each goal and project managers assigned. Staff resources will be allocated for each goal. Scope, schedule, (projected) costs, deliverables, major milestones, approach, and successful completion criteria will be identified for each goal. Key stakeholders will be identified and involved at the project inception and throughout implementation. Potential risks to implementation will be identified and managed through the project's risk management process. Throughout the execution of each goal, monitoring progress, tracking results and communication will be paramount.

Each goal will contain both process and outcome measures. *Process* measures will include metrics such as: number of evidence-based programs expanded; increases in program capacity; number and percentage enrollment/participation;

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number and percentage program completions; certificates, General Education Development (GED), or diplomas awarded; increases in housing placements; community drug treatment beds filled; duration of aftercare; job placements; number of reentry memoranda of understanding signed with local jurisdictions; number of reentry facilities funded; number of reentry facilities established; reentry facilities capacity and participation; community participation in prison and community programming; inter-governmental participation in reentry service delivery; number and percentage of staff participation in training in the mission of CDCR and its renewed emphasis on rehabilitation. *Outcome* measures will address the broader questions surrounding achievement of desired results, i.e., recidivism reduction, continuity of care, internal (cross-functional) and external collaboration, cost-effectiveness, and public safety.

The ultimate measure of performance is the restoration of California as a national model in the field of Corrections. I believe that with all of the major stakeholders working together this status can once again be attained in the field of Reentry. I am committed to work toward that end because of what it represents for California citizens, victims, and offenders.

2. ***Beyond overcrowding, which is a serious obstacle to successful programming, are there other significant barriers to successful inmate participation in programming? What strategies, if any, do you intend to implement to overcome these barriers?***

Obstacle: Teacher recruitment and retention is a leading obstacle in providing educational programming for offenders. In fiscal year 2005/06, we lost 71 teachers to retirement and currently have 294 teacher vacancies.
Strategy 1: We submitted a Budget Change Proposal (BCP) to provide pay parity for CDCR teachers with local school district salaries. The Governor's Budget released on January 10, 2007, includes the Teacher Pay and Schedule Parity BCP to be implemented on July 1, 2007. If approved, CDCR will be able to offer a more competitive salary to enhance its recruitment and retention of teachers. The Office of Correctional Education (OCE) is currently working with the Human Resources Workforce Planning Unit to initiate a more proactive approach to recruit qualified teachers for the vacant teaching positions.
Strategy 2: This academic year we also authorized the use of substitute teachers, retired annuitants, relief teachers, or permanent-intermittent employees to provide relief coverage in the classrooms.

Obstacle: Space for classrooms and vocational shops is another barrier.
Strategy: We are pursuing alternative work week scheduling such as the 4/10/7 or third watch scheduling where possible to double the use of existing work space. Additionally, we are preparing Capital Outlay requests for modular buildings at the following eight locations: California Correctional Institution; California Men's Colony; California Medical Facility; Ironwood State Prison; Pleasant Valley State Prison; Richard J. Donovan Correctional Facility (RJD); California State Prison, Sacramento (SAC); and Valley State Prison for Women for the 2009/10 Fiscal Year (FY) where there is space available. Consideration is also being given to the purchase of existing (used) modular trailers which may be purchased on an earlier timeframe.

Obstacle: In-prison substance abuse programs are adversely affected by institution lockdowns.
Strategy: We are currently reviewing all of our in-prison drug treatment programs. One of the key areas under review is alternative methods for programming in institutions experiencing problems related to lockdowns. Alternatives include relocating the program to another yard less impacted by lockdowns, working with custody personnel to "unlock" offenders deemed to be uninvolved in the disturbance, and/or transferring the program to another institution where programming is less impacted by institution lockdowns. Following completion of the program review, an action plan will be developed for consideration by Adult Programs and Division of Adult Institutions (DAI).

Obstacle: Staff resources for self-help and religious program expansion are limited. The overall management and oversight of self-help programs was significantly diluted due to budget cuts and the elimination of the institutional program manager (Community Resources Manager) in FY 2003/04. These position cuts weakened the quality and consistency of available programming and data collection related to these program areas.
Strategies: In the current fiscal year, CDCR has begun to address these issues through a number of efforts designed to enhance opportunities for successful programming:

Implementation of Recidivism Reduction Strategies

- Established a three-year Community Partnership Managers (CPMs) pilot program to improve resource coordination and delivery to offenders – both in prison and in the community. In three institutions there is a CPM assigned to plan, organize, and direct programs to develop, allocate, coordinate, and manage all community resources within and for specified correctional institutions and re-entry communities; make resource availability/priority decisions within the institution; and design and implement new and innovative programs to benefit inmates. The program

also includes $152,000 in volunteer sponsor funding to support additional programming at the CPM sites.
- Established the first-ever CDCR grants program designed to create partnerships with private/non-profit and the local public sector. These partnerships support innovative re-entry programming designed to improve offender outcomes.

Increased Offender Access to Religious Programs and Services
- Upgraded all part-time Muslim, Jewish, and Native American chaplain positions to full-time;
- Working with internal stakeholders to develop an offender faith preference survey to provide recommendations on religious programming and staffing needs.

Accessing New Federal Resources
- Applied for and secured Federal Prisoner Reentry Initiative Grant funds ($1.8 million over two years) to work with community and faith-based organizations in Sacramento, Fresno, Oakland, and San Diego counties to deliver reentry services.

Continued Support Services for Inmates and their Families
- Completed competitive bid process and awarded a contract for In-Prison Case Manager Specialists to assist with inmate transition to include conflict resolution workshops, a court-accepted parenting program, and reentry and employment planning;
- Completed competitive bid process and awarded contract for inmate visitor centers at all 33 prisons. This service contract facilitates and assists inmate family members with visiting issues by providing clothing exchange, snacks for children, clean safe waiting area and child care.

Improved Support for Self-help Programs
- Dedicated $120,000 to purchase materials needed to operate the 12-Step Programs that operate in the facilities;
- The Division of Community Partnerships (DCP) initiated collaboration with internal stakeholders to identify a streamlined, secure method for processing of volunteers. The goal is to create a "Universal Identification" process to centralize the screening and clearance approval for volunteers wishing to provide services inside CDCR institutions.

Obstacle: In the area of Administration, competition with the federal court Receiver for finite support services have proven to be a more formidable challenge than expected. My experience has been that priority is given to requests from the Receiver's Office for any and all recruitment, hiring, testing,

contracts, procurement and facility management issues. It is my opinion that many of the accomplishments noted above, and numerous others, would not have been achieved were it not for the strategies identified below.

Strategies: We have worked diligently to achieve success through cross-functional communication, relationship building, and educating our support services counterparts on the role they play in achieving the Department's mission. We have found them to be highly receptive to this working partnership. Another strategy we've employed is redirecting staff resources to assist Support Services in processing the Adult Program requests. I have also sponsored training in Project Management for our project managers of the Recidivism Reduction Strategies and included our Support Services staff in the training. Collectively, these steps have assisted in moving the Adult Programs initiatives forward.

Correctional Re-Organization

3. ***Your position was created by the July 2005 reorganization of CDCR. How do you believe this newly created position has improved the delivery of programs in adult institutions?***

Since the establishment of the Chief Deputy Secretary position, CDCR has identified 29 Recidivism Reduction Strategies funded by the Legislature in the 2006/07 Budget Act. Nearly all of the projects are in the process of being implemented. When fully operational, they have the capacity to serve thousands of offenders through in-prison, pre-release and community aftercare programs. The programs will be evaluated to determine their effectiveness and potential for replication, modification, or elimination.

In the area of Adult Education, 42 new vocational programs are being established this fiscal year. A total of 19 positions were established as part of the Recidivism Reduction Strategies referenced above. Another 18 vocational programs are being reinstated at High Security institutions. Four new programs are in the process of being initiated at RJD to support Senate Bill 618 participants. And finally, a cosmetology program is being initiated at the California Institution for Women (CIW).

Since the establishment of this position, the OCE has focused on building internal partnerships with the Support Services staff in CDCR. Progress has been made in the recruitment and selection of teachers. One year ago there were over 400 teacher vacancies. Since then, OCE staff has worked with the Office of Selection and Standards to provide assistance to advertise and recruit

for all academic, vocational, and library positions. Today, the number of teacher vacancies, while still high, is down to 294.

Alternative Education Delivery Models (AEDMs) are being created to provide educational services to inmates who are either assigned to other programs or have the ability to learn outside of the classroom setting. The AEDMs provide a means to deliver educational services to inmates during extended lockdowns. Currently there are 5,938 inmates receiving educational services through independent study and distance learning who would otherwise not have access to any programming. There are currently 17 institutions where the AEDM Operational Procedure has been successfully negotiated with the California Correctional Peace Officers Association with another 7 institutions ready for discussion at the next negotiation session on May 1, 2007.

In the absence of the information technology infrastructure needed to operate a school system that serves approximately 47,000 students in a variety of learning settings, we initiated a Test of Adult Basic Education (TABE) stand alone database last year. The database, although newly created, is accessible to designated education staff in each facility. The database functions to reduce re-testing of inmates as they transfer from institution to institution. Furthermore, the database is used to produce ad hoc reports for measuring student gains.

However, I believe the long term solution to our infrastructure needs is the implementation of EdFIRST (Education for Inmates Reporting and Statewide Tracking). EdFirst will replace an existing inefficient labor intensive manual system and provide an electronic means to effectively and efficiently track and report student participation, progress, and achievement data for incarcerated adult offenders. Should the budget change proposal currently in progress be approved, the system will be operational by June 2011 and interface with the Strategic Offender Management System, to create a seamless view of the adult offender's case management record.

Much work remains to be done in the development of a seamless system of program delivery to adult offenders. While many of the component parts exist within the CDCR, they have not been shaped into an integrated system that delivers a continuum of services to offenders from reception, through incarceration and into the community. This is an area in which I plan to devote a considerable portion of my energies in the coming months to improve the delivery of services for adult offenders.

Accountability

4. ***Please describe your specific role in the creation or elimination of individual educational, vocational, and self-help programs at each institution. For example, are you responsible for program creation or elimination? If so, how do you determine which programs to emphasize or expand and which programs to eliminate? What factors do you consider? If you are not the person responsible for these decisions, who is, how do you coordinate with that person, and what role do you play in the process?***

Adult Programs plays a pivotal role in guiding the creation and elimination of programs. New program development must be evidence-based. Although CDCR historically operated a number of effective programs, they were often under funded and did not always provide for a continuum of services from incarceration through parole. In addition, during lean fiscal times, programming was reduced.

In the current fiscal year, I took the lead in developing and implementing a systematic approach to new program development to focus on implementation of programs proven to reduce recidivism *based upon empirical evidence*. New and innovative programs that have yet to be tested but which offer promising outcomes for the offender population were sought. Those untested programs will be evaluated as to their outcomes. Equally important is that a continuum of services is provided while incarcerated, during pre-release programming and parole planning, and in the community upon release. One such program developed this year is the Carpenters Apprenticeship Program. This program, located at Folsom State Prison and operated by the Prison Industry Authority (PIA), provides participating inmates with carpenter training on modular construction and a connection to the Carpenter's Union upon release. Inmates will obtain a pre-apprenticeship certification through Carpenter's Union Local 46 (CUL46). PIA will be incorporating the carpenter's curriculum in this program under the direction of PIA. In turn, CLU46 will admit these paroled inmates to Local 46 Carpenter's Apprenticeship Programs, which allows entrance into the CUL46 at one step above "entry level."

A set of principles were developed to guide decision-making regarding this new program development. New programming concepts are required to be aligned with the "Guiding Principles" in order to be considered for approval, which include the principles of evidence-based programming, strategic alignment, and continuity of services.

Ultimate responsibility for the operation of specific programming rests with the warden for institution-based programming and with the Division of Adult Parole Operations (DAPO) for parolee programs. For instance, the Warden is responsible for the approval of inmate leisure time activity groups, which include "self-help" groups. These groups promote educational, social, cultural and recreational interest of participating inmates. Groups include, but are not limited to, such topics as Alcoholic Anonymous (AA)/Narcotics Anonymous (NA), Criminal and Gang Member Anonymous, Parenting, Anger Management, Conflict Resolution and Victims Offender Reconciliation.

The frequency and number of the self-help programs is determined by needs of the population. The Warden is accountable for ensuring that the number of self-help sponsors and self-help programs such as AA or NA are sufficient to meet the needs of the inmates. Monitoring the quality of the program is the responsibility of the self-help sponsor and the Warden.

Each institution tracks the attendance and number of participants in the various self-help programs and education and vocational programs. This information is reported to the Warden and monitored quarterly by each Warden, Associate Director and Adult Programs through the COMPSTAT process. Additional monitoring of programming occurs through expenditure monitoring (for self-help programs) and through the use of feedback from several external groups, including the 12-Step Advisory Committee and the Inmate Family Council.

The need for additional education programs and requests for additional teachers is the responsibility of the on-site School Principal, the Warden, the respective mission based Associate Director, and Headquarters OCE. Authorization of additional teacher positions is the responsibility of Headquarters OCE Program.

CDCR's Expert Panel on Recidivism Reduction is conducting an assessment of existing CDCR programs. They will be categorized as:

- Activity Programs, which aim to occupy the time of an offender, stimulate them, or engage them in pro-social activity to ease their adjustment to institutional custody or parole supervision.
- Control Programs, which are designed to increase offender compliance with conditions of confinement or supervision, or to more quickly, reliably and efficiently detect and respond to lack of compliance.
- Risk Reduction Programs, which are intended to reduce the risk of antisocial behavior of offenders, and thus make them less likely to commit further criminal offenses.

The Panel will select from programs in the Risk Reduction category, and evaluate the likelihood of their ability to reduce recidivism using the California Program Assessment Process which applies evidence-based criteria to measure potential for recidivism risk reduction. The assessment will also involve site visits by Expert Panel members. Please see Question Number 9 for a more detailed response regarding the Expert Panel.

Information yielded by this evaluation should provide the basis for me and the executive team to make decisions regarding steps toward the expansion, modification, re-alignment or closure of programs.

5. ***Are you responsible for monitoring the quality and effectiveness of educational, vocational, or self-help programs at each institution? How do you assess each program? If you are not the person responsible, who is, how do you coordinate with that person, and what role do you play?***

As the Chief Deputy Secretary, Adult Programs, I am responsible for inmate programming. The Directors of Division of Education, Vocations and Offender Programs (DEVOP) and DCP in cooperation with the Directors of DAI and DAPO share responsibility for monitoring the quality and effectiveness of educational, vocational, and self-help programs. With regard to educational and vocational programs, the Wardens provide direct supervision to the Principals of each school; however, the Assistant Superintendents in the OCE provide functional supervision. The Warden is accountable for ensuring that the number of self-help sponsors and self-help programs such as AA or NA are sufficient to meet the needs of the inmates interested in these activities. Monitoring the quality of the program is the responsibility of the self-help sponsor and the Warden Information regarding the operation of educational, vocational and self-help programs are reported in COMPSTAT. Under my leadership, OCE has reestablished its auditing unit and will begin periodic audits of programs in the prisons and parole regions this fiscal year.

6. ***In addition to establishing programs and monitoring their quality, there are many day-to-day issues that have significant impact on inmate programming. How is your division informed when programs do not take occur or program time is reduced due to decisions by custody staff, i.e. lockdowns or modified programs? Is the Adult Programs Division ever included in decisions which alter the ability of inmates to participate in program? If so, why?***

Adult Programs staff are consulted with increasing regularity regarding decisions which alter the ability of inmates to participate in programs. The consultations occur either in regularly scheduled interdivisional meetings or on an ad hoc basis as issues arise. The DAI and DAPO managers are aware of the important roles that programs play in achieving the CDCR's rehabilitation mission: preparing offenders for reentry success. The OCE receives a daily report from each school principal listing the class. Reasons for closures are categorized.

7. ***Is your division responsible for addressing teacher vacancies or prolonged teacher absences? Is it responsible for addressing classroom equipment needs? How do you monitor this effort? For example, when Senate staff visited California Institution for Women recently, computers in the office services vocational program were not working, so inmates were unable to work on their assigned activities. Who monitors whether equipment is operational and who is responsible for repairing it? Is this a headquarters responsibility or a local one?***

Monitoring and addressing teacher absences are the joint responsibility of the school site Principal, his or her first line supervisors (usually an Associate Warden or Chief Deputy Warden) and my staff in OCE. The OCE collaborates with the local warden on hiring issues. OCE must approve all authorizations to fill positions. Moving positions from one prison to another requires the authorization of both DEVOP and DAI. The OCE communicates with the Office of Selections and Standards and the Division of Workforce Planning regarding recruitment for education positions. That unit is responsible for recruiting for all educational and vocational vacancies. Recruitment of qualified staff has become increasing difficult due to pay parity issues in relationship to other school districts and the Division of Juvenile Justice. I am optimistic however that the Pay and Schedule Parity Package in the 2007/08 Governor's Budget will favorably impact our ability to hire and recruit teachers.

In an effort to keep classes open during teachers' absences, we have reestablished relief coverage to conduct classroom instruction during the

absence of assigned teaching staff. OCE monitors all classroom closures through a daily report generated by each institution. The report identifies the reasons for closures.

Until 2005, when the OCE obtained budget authority, the institutions were responsible for the purchase of replacement equipment through the Schedule 9 process. Historically, other than the funding through the Schedule 9 process, equipment purchases were supplemented by the federal Vocational, Education Training Act. Priority needs generated the order of what was purchased in the Schedule 9 process. Equipment for schools generally were not ranked highly. Education equipment repairs are now authorized through the schools' Operation and Expense budget annual allocations. During current year, there has been a concerted effort to provide funding for equipment through the Recidivism Reduction Strategies funding, base funding for classroom and shop modernization equipment and general fund salary savings. Systems have been implemented to track compliance.

The school site principal is responsible for monitoring whether or not equipment is operational and should create a service and expense agreement if the equipment cannot be repaired by Plant Operations staff. For large repairs, the school principal needs to submit documentation to the OCE for funding to be allocated to the repair. Technology equipment is supported by the Enterprise Information Systems and computers are serviced by the Association Information Systems Analysts in each institution. In an effort to resolve on-going maintenance issues with education computers in the institutions, the OCE is requiring that all new purchases include a three-year installation and maintenance agreement.

8. ***What is the specific role of the wardens and the mission-based associate directors at the various custody levels in inmate programming? Do Wardens create educational, vocational and/or self-help programs? For example, whose job is it to monitor self-help programs such as Alcoholics Anonymous at a particular institution? Who determines whether the sponsor regularly conducts the program, the quality of the program, and how many inmates attend? Who would decide whether additional AA program is needed in a different yard or at a different time?***

The Warden is responsible for the approval of inmate leisure time activity groups, as authorized in California Code of Regulation, Title 15. These groups promote the educational, social, cultural and recreational interests of participating inmates. This authority, along with the rehabilitative mission of CDCR,

encourages institutions to seek opportunities that create, enhance and expand programs such as:

- Alcoholic Anonymous
- Anger Management
- Criminal and Gang Member Anonymous
- Conflict Resolution
- Narcotics Anonymous
- Parenting
- Victims Offender Reconciliation
- Cocaine Anonymous

The frequency and number of the self-help programs is determined by needs of the population and the availability of sponsors and volunteers. The Warden is accountable for ensuring that the number of self-help sponsors and self-help programs such as AA or NA are sufficient to meet the needs of the inmates interested in these activities. Monitoring the quality of the program is the responsibility of the self-help sponsor and the Warden.

Each institution tracks the attendance and number of participants in the various self help programs. This information is reported to the Warden and monitored quarterly by each Warden, Associate Director and Adult Programs through the COMPSTAT process. Additional monitoring of programming occurs through expenditure monitoring and through the use of feedback from several external groups, including the 12-Step Advisory Committee.

The need for additional education programs and requests for additional teachers is the responsibility of the on-site School Principal, the Warden, the respective mission based Associate Director, and the Headquarters OCE. Authorization of additional teacher positions is the responsibility of Headquarters OCE Correctional Education Program.

Expert Panel

9. ***The 2006-07 Budget provided $900,000 to CDCR to assemble a group of experts to advise on how best to deliver program to inmates within institutions and on parole. What is the scope of the panel's work and its status? How are you being kept informed of this work?***

We brought together an Expert Panel on Recidivism Reduction in December 2006. I chair this Expert Panel, with my co-chair Dr. Joan Petersilia, Ph.D., Director, Center for Evidence-Based Corrections, University of California, Irvine. We held our first two-day meeting on December 14 and 15, 2006. Dr. Mimi Silbert, President and CEO of Delancey Street Foundation in San Francisco hosted this first meeting. The

following expert panel members are participating in the assessment of existing programs and advising us on how best to deliver programs to inmates within institutions and on parole utilizing best practices for evidence-based programming. We expect to deliver a final report to the Legislature by June 30, 2007, as requested in the Budget Act language.

Contracted Experts Panel members:
James F. Austin, Ph.D., JFA Associates
Barbara Bloom, Ph.D., California State University Sonoma
Mark Carey; President, The Carey Group
Elyse Clawson; Executive Director, Crime and Justice Institute
Michael Jacobson, Ph.D., President, VERA Institute of Justice
Barry Krisberg, Ph.D., President, National Council on Crime and Delinquency
Joseph Lehman; (former) Secretary, Washington State Department of Corrections
Faye Taxman, Ph.D., Professor at Wilder School of Government and Public Affairs
Reginald Wilkinson, Ed.D., (former) Director, Ohio Department of Corrections
Joan Petersilia, Ph.D., Director, Center of Evidence-Based Corrections, University of California, Irvine

Other Government or pro-bono Panel members:
Jeffrey Beard, Ph.D., Secretary, Pennsylvania Department of Corrections
Steve Ickes, Deputy Director, Arizona Department of Corrections
Marty Horn, Commissioner of Corrections, New York City, New York
James H. Gomez, (former) Director, California Department of Corrections
Kermit Humphries, Correctional Program Specialist, National Institute of Justice
Mimi Silbert, Ph.D., President and CEO, Delancey Street Foundation, San Francisco

During the past four months, the Expert Panel members have dedicated substantial amounts of their time reviewing California's adult offender programs in order to develop focused recommendations for improvements. The members have met in a plenary session twice and in smaller committee sessions four times. A substantial amount of their time has been spent working independently reviewing documents, drafting sections of their report, and commenting on the work products via electronic means. Most of the Expert Panel members have other full-time positions, and some are high level executives in other state's departments of corrections. I mention this to recognize both the limited time they have to offer us and their professional dedication to advance the studies of adult offender management with a focus on recidivism reduction.

Joan Petersilia, Ph.D., Co-chair of the Expert Panel, and I, are continuing to work with teams of Expert Panel members in the development of products that will address the expectations outlined in the Budget Act language. One committee is preparing a baseline assessment of current adult offender programs, which will include an inventory of existing programs, program location, and the number of offenders that each can serve. Each of the following areas will be specifically addressed: basic education programs, vocational programs, and self-help programs. The report will also include the professional impressions of panel members on other programs based upon on-site visits to some of the institutions and parole offices.

The second committee will provide a recommended recidivism strategy to improve and implement programs and services intended to reduce recidivism. Recommendations will include references to models and templates from other states that are applicable or appropriate to improve correctional programming and deployment of program resources in California.

The Expert Panel efforts to date are major steps toward a systematic and on-going evaluation of adult offender programs. The Office of Research will adopt a similar process to ensure professional evaluations of programs are conducted that will assist CDCR in making decisions necessary to deliver effective evidence-based programming. A continuing formal relationship with the University of California and other researchers will be supported and will include plans for additional program evaluations by external correctional experts on adult offender programs and related outcomes.

The dedication and enthusiasm of each of the Expert Panel members is compelling and I'm optimistic their final report will guide us in the implementation of an integrated adult offender programming system.

10. *Do you anticipate the panel will provide specific recommendations to CDCR on how to raise literacy levels and improve educational and vocational program delivery? Please explain your expectations.*

It is my expectation that the Expert Panel will present recommendations for helping California reduce recidivism by implementing evidence-based programs and practices. These recommendations are based on "what works" research, and where possible, will provide examples of models operating successfully in other states. One of the basic tenets of the Expert Panel's research suggests that correctional practitioners must provide the "right programs to the right people at the right time." Given this context, I fully anticipate that the Expert Panel will

address the issues of educational and vocational program delivery. Inherent in that discussion will be the issue of literacy levels of our adult offender population.

Risk and Needs Assessment

11. ***Since the time of the re-organization, many CDCR administrators have referred to the goal of providing every inmate with a risk and needs assessment that would be conducted immediately upon intake and used continuously through parole. What is your understanding of the status of this effort, and how has your division been involved? What effect will it have on programs?***

Phase I of the Automated Risk and Needs Assessment Project (ARNAP) is will be initiated by June 30, 2007, in four Reception Centers (RCs): Deuel Vocational Institute, VSPW, CIW and RJD. By the end of current year, newly received inmates at those four RCs will be assessed using the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) instrument. Phase II will extend the project to the other RCs by the end of FY 2007/08. I am the Executive Sponsor of ARNAP and my direct report, Frank Russell, the Director of DEVOP, is one of the co-chairs of the task force that oversees it. The assessments will enable Adult Program staff to focus interventions on inmates who are at moderate to high risk to recidivate. They will identify dynamic criminogenic needs and inform the classification and assignment processes so that inmates may benefit from available programs that are effective in terms of type, sequence, duration and intensity. The assessments will also reveal the extent to which specific programs are actually needed so that they may be appropriately sized and resourced.

Recidivism Reduction

12. ***The 2006-07 Budget included $52.8 million for recidivism reduction. From that sum, $4.5 million was to be directed toward restoring visiting days that had been cut in a previous budget year. What is the status of this effort? How do you believe visiting plays a role in reducing recidivism? Does your office monitor visiting practices and procedures? If so, when and where?***

The Department has restored a 3rd day of visiting at 10 male institutions. All sites activated on schedule during the period of July through November 2006. It was anticipated that over 5,200 inmate visits would occur by March 2007; to date, 13,443 inmate visits have occurred on the additional day. I was instrumental in

adding a component to this project of family reunification and reentry support through use of a Social Worker located on site. Recruitment had been difficult due to salary issues and the need to work weekends. However, the Coleman Special Master issued an order to significantly increase the salaries effective January 2007, and the CDCR has begun to see success in recruiting qualified candidates. In March 2007, both Supervising Psychiatric Social Worker positions were filled, and as of March 30, recruitment of the 12 Clinical Social Workers stands as follows:

POSITIONS RECEIVED	**12**
Total Hired	0
Total Hire in Process	5
Total Interviews Pending	2
Total Additional Recruitment Needed	5

It is anticipated that these positions will be filled by May 2007. The CDCR is requesting to redirect $375,000 of the salary savings associated with the delay in filling the positions to fund the creation and printing of a 58-county service directory to assist with family reunification services for both inmates and parolees.

Family visiting for valley women's institutions, called the Chowchilla Family Express, began at the Central California Women's Facility and at VSPW on March 25, 2007. The event was covered by the media and Senator Gloria Romero attended. Buses arrive weekly from different regions of the State. It was anticipated that this program would provide 450 inmate visits by March 2007. There has been a two-month delay in activation due to the need to get the contract approved, but this project is fully implemented and with weekly bus service there will be no difficulty in reaching the intended number of inmate visits.

Visiting programs are evidence-based and have previously proven to be effective and beneficial not only to inmates and inmate's family members; but to staff as well. Researchers have discovered a strong and consistently positive relationship between parole success and the maintenance of strong family ties while in prison. Maintaining an inmate's family and community relationships through enhancing visiting services and programs, and increasing the frequency and quality of the visits, has been underutilized since budgetary constraints forced the Department's decision to curtail the visiting program. The visiting

program has also proven to be successful in the past by helping to improve an inmate's behavior while incarcerated.

The Additional Visiting Day program has introduced the Family Case Management process to the CDCR. This approach utilizes a Social Worker in an innovative approach that will be a first step toward the development of an aggressive and effective family reunification visiting program. Such a program would make the regular visiting process an opportunity to address individual, family and other socialization issues. The Social Worker will interact with the inmate and specific family members to address multi-generational cycles of issues prior to the inmate being reintegrated into the family and released into the community.

The DAI collects weekly visiting statistical information from all of the institutions. This data includes information on the number of inmates, adult and minor visitors participating in a visit, as well as information on the number of terminations made to visits. In the Fall/Winter of 2006, DAI did a statewide survey of the institutional visiting programs to identify statewide visiting issues. In addition, the DAI meets quarterly with the statewide Inmate Family Council, where any visiting issues can be brought for resolution. The DAI had created a task group which includes Inmate Family Council representatives and CDCR headquarters representatives regarding the Additional Day of Visiting Program, and continues to use the task group to identify ways to improve family reunification.

13. ***Is it possible for CDCR to measure the impact of specific programs on recidivism reduction? If so, who is responsible for measuring and to what extent is CDCR doing it? If you are not the person responsible, who is, and what role do you play, if any?***

Yes, it is possible for CDCR to measure the impact of specific programs on recidivism. However, the confidence we can place in that measure varies with the time and resources dedicated to that task. We can compare recidivism rates between program participants and that of the general population relatively easily, but we sacrifice our ability to say we are making an "apples to apples" comparison. At the other end of the scale, a more exacting and expensive study using a random assignment method gives us more confidence, but at a greater cost. Availability of resources requires us to prioritize our efforts at this point.

The new CDCR Office of Research was created and funded to conduct recidivism outcome evaluation of programs through a number of mechanisms. In some cases, data is collected by Office of Research staff that also conducts the evaluations.

Some evaluations are implemented through contracts with University of California researchers. In other cases, program designs have included resources dedicated to conducting evaluations regarding recidivism outcomes. Office of Research staff acts as consultants in the design of such built-in evaluations.

Up to now, the Department has conducted limited recidivism research. There are current evaluations established in about 20 Recidivism Reduction programs, and others are in various stages of planning. A focus of the Recidivism Reduction program has been on evaluation of those projects that are aimed at reducing the risk of reoffending for the purposes of modifying, eliminating or expanding these programs according to their effectiveness. Therefore, CDCR staff has been careful to provide for outcome evaluations in their designs, through contracts or through the Office of Research.

The Assistant Secretary for the CDCR Office of Research, Dr. Steven Chapman, is the person responsible for evaluation, data analysis and research at CDCR. The Adult Research Branch of the Office of Research is the unit responsible for evaluation studies. The Office of Research provides evaluation and support services to my office. As the Chief Deputy Secretary, I take the lead role in setting policy regarding the evaluation of program effectiveness for the purpose of modification, termination or expansion of programs. I work collaboratively with the Assistant Secretary for Research to make sure projects are evidence-based or promising programs, that they are evaluated for effectiveness, and that the knowledge gained is used by department managers and decision-makers.

14. Is it possible to measure or assess the impact of specific programs on other positive outcome jes such as reducing the potential for violence within institutions, promoting stronger family ties or, increasing victim awareness, etc? If so, is CDCR doing it, and what role do you play, if any?

Yes, it is possible to assess other such outcomes. Some of these outcomes require data that is relatively accessible, and therefore require less in the way of time and resources. Others, such as promoting family ties, are difficult to measure objectively, and require extensive data collection efforts which are costly and time consuming.

The Behavior Modification Unit study (already in progress), among others, will be looking at outcomes related to incidents, including violent behavior. There are a number of projects such as the Female Rehabilitative Community Correctional Centers, and Recidivism Reduction projects that are related to promoting

stronger family ties, especially among female offenders. There are research components in the planning stages with these projects that will examine how well they promote ties to family. Although there are no active studies related to victim awareness, CDCR is considering the use of restorative justice curricula that focus on the impact of crime on victims.

In all of these areas, I have taken a lead role in setting policy as well as the design and implementation of innovative programs, and sound outcome evaluation to assess their effectiveness.

Academic Education and Literacy

15. Do you have any recent data indicating approximately how many inmates have yet to earn a GED?

Information verifying high school diplomas, GED certification, and college credits is not currently collected at reception. Representative sampling research conducted by California State University, Sacramento estimated that 67.3 percent of the population does not have a high school diploma, GED certificate or college credits. Part of the rationale for implementing the COMPAS risk needs assessment upon reception into the prison system is to identify those inmates with a medium to high risk to recidivate. Once these inmates are determined, the schools will conduct more thorough inquiries to determine GED or high school status.

16. Based on data provided by your office, approximately 10,500 inmates, or roughly 6% are enrolled in academic classroom work which can lead to earning a GED diploma. Beyond the work of the expert panel, are there efforts underway to explore other possible options to increase the number of inmates who might earn a GED?

Four AEDMs are being deployed in 17 of the 33 prisons. Labor negotiations are underway to extend the AEDMs into the other prisons. The AEDMs allow institutions with limited staff resources, long waiting lists and limited space to provide non-traditional GED educational services to more students. The plan also includes a provision for providing educational services to inmates during lockdowns. The four models include:

- The Independent Study Model provides for GED educational services for higher-functioning students through weekly contact with a teacher to

inmates in areas where services were not previously offered and to students who work in other job assignments.

- The Distance Learning Model utilizes various multi-media approaches to teach students. The learning modality may include television, such as the Correctional Learning Network, the Kentucky Educational Television GED for students, and college course work using DVDs.
- A half-day education combined with a half-day other job assignment. An example would be a half-day assignment in education and a half-day assignment in substance abuse recovery.
- Half-day education classroom lecture combined with half-day independent study.

17. Based on date provided by your office, the average reading level of CDCR inmates is approximately 7.1 grade level for males and 8.0 grade level for females. Beyond the work of the expert panel, what efforts are underway to improve literacy levels amongst inmates? How will you measure their success? What use does CDCR make of inmate tutoring programs? What do you believe are the barriers to more widespread use of inmate tutoring efforts? Every CDCR institution employs at least one librarian and library clerks. To what extent are they involved in inmate tutoring programs?

The framework for the provision of literacy services to inmates is outlined in the Statewide Literacy Plan developed by CDCR in 1989. The plan was implemented as a result of SB 949, which included the addition of Penal Code Section 2053.1, Prisoner Literacy Act. The Statewide Literacy Plan mandates a standardized approach for all institutions and addresses the following seven major implementation issues: (1) Eligibility, (2) Resources, (3) Assessment, (4) Data Management, (5) Enrollment, (6) Additional Program Components and (7) Evaluation.

Literacy programming throughout CDCR includes collaborative involvement with various literacy providers. California Literacy Inc. and Literacy Volunteers of America (LVA) provide literacy support and instruction to inmate tutors participating in CDCR peer inmate literacy tutoring programs. Inmate tutors become certified Laubach tutors offering services to inmates enrolled in education and non-education program areas such libraries, kitchens and housing units. In addition to the peer inmate literacy tutoring program, literacy tutors from the community volunteer time to provide literacy services to those inmates identified as most in need. OCE has designated positions at each institution as Distance Learning and Independent Study teachers. These teachers also provide tutoring.

The *Education Services Master Plan,* consistent with the Statewide Literacy Plan, identifies strategies and or efforts that have improved participation and literacy levels of inmates. They include:

- The creation of media centers to allow individual access to the Correctional Learning Network (CLN);
- The implementation of education services in areas of institutions where historically no education has existed (in non-traditional spaces) such as dining halls, visiting areas, work sites, libraries, minimum support facilities, and administrative segregation areas;
- The expansion of volunteer and peer tutoring services, including the utilization of technology to facilitate educational programming access;
- The implementation of educational programs for half-time assignments with work, recreation, cell study, college, PIA, and other applicable assignments within the institution;
- The acquisition of additional staff to support alternative education programs;
- The implementation of education services in special housing units and non-traditional settings.

Student success will be measured by the following:

- The reading scores as shown on the TABE and Comprehensive Adult System Assessment System (CASAS) tests;
- The math scores on the TABE and CASAS tests;
- The learning gains in reading and math scores as shown on the TABE and CASAS tests;
- The number of students taking and passing the GED test;
- The number of students obtaining high school diplomas;
- The number of students enrolled in postsecondary coursework.

Barriers to more widespread use of tutoring efforts include:

- Facility and space constraints;
- Availability of staff;
- Student accessibility to programs;
- Fiscal limitations.

Please see Question Number 2 for more specifics regarding actions we are taking to mitigate these issues.

18. What use is made of distance learning in CDCR institutions? Are any efforts underway to enhance the use of distance learning given the limited classroom space available?

The use of Distance Learning is growing in CDCR. Distance Learning refers to teaching using media such as televisions and computers. It is one of four models of the AEDM being implemented. As of April 1, 2007, 17 of the 33 institutions had an approved AEDM Operational Procedure. The process of approving the other 16 institutions and putting distance education teachers in place continues. The CLN, a Distance Learning program, has been introduced at all 33 institutions (to considerably varying extents) with satellite dishes installed in 32. The prison education departments facilitate distance learning with GED and college programming. OCE has designated positions at each institution as Distance Learning and Independent Study teachers. These teachers also provide tutoring.

19. Ironwood State Prison has a partnership with Palo Verde Community College District that allows inmates to earn Associate of Arts degrees through distance learning. Inmates enrolled in this program are often described as model prisoners. What effort has been made to replicate this program elsewhere?

The California Community College Program was initiated at nine pilot prisons in June 2005. Since my appointment, I have been personally involved in efforts to expand that program. In June 2006, the pilot was expanded to the other 24 institutions. Efforts to replicate the highly successful Palo Verde Community College program at Ironwood State Prison have not been fruitful due largely to a lack of interest on the part of other local community colleges in committing Educational Opportunity Program resources and staffing to the postsecondary education of inmates. Efforts are being initiated to work with Palo Verde Community College in expanding the college program at Ironwood State Prison to Chuckawalla Valley State Prison.

Substance Abuse Programs

20. ***The Division of Addiction and Recovery Services was created recently to improve the administration of substance abuse programs and improve outcomes for participants. This new division is under your jurisdiction. How will you work with this new office? Many inmates with substance abuse problems also have vocational and educational needs. How will these needs be balanced and coordinated? How will results be measured?***

It is my responsibility in overseeing the newly created Division of Addiction and Recovery Services (DARS) to assure that CDCR takes full advantage of available resources, research and evaluations to operate evidence-based substance abuse management programs with integrity and fidelity to the chosen models. I have set expectations, and I monitor data that is reported through the COMPSTAT process in order to hold accountable DARS staff in accomplishing our goal. I have already requested work plans on major projects and have begun to routinely meet with the Director of DARS for program updates, as I do with my other direct reports.

The key to coordinating programs that address the multiple criminogenic needs of inmates and parolees is assessment at reception. Those assessments, with ongoing dynamic updates, will allow us to direct our program efforts to offenders on whom we are most likely to have the most impact and allow us to direct them into appropriate programs. This will often mean that offenders will be involved in more than one intervention at a time. For example, a given inmate may be enrolled in adult basic education in the morning, participate in substance abuse treatment in the afternoon and attend a self-help anger management in the evening.

The CDCR is currently enhancing its program evaluation capability both in-house and by means of contracts with credible outside agencies. Those evaluations will measure and report on operational effectiveness and offender outcomes. The evaluations will inform future decisions about program offerings and delivery.

21. ***What is CDCR doing to ensure that all substance abuse treatment beds are filled?***

I am committed to developing and implementing evidence-based substance abuse treatment services that begin in prison and continue upon the individual's parole. CDCR initiated two RC programs (at Wasco State Prison and North Kern State Prison) that were envisioned as ways to facilitate inmates' transfer into our

Substance Abuse Program (SAP) beds. Although the programs have shown to be positive in terms of identifying inmates eligible for community treatment in Drug Treatment Furlough programs, it has not yielded the positive results anticipated for increasing SAP participation. We are in the process of re-evaluating the SAP-RC programs.

Some of our programs are located at institutions which, due to operational or classification issues, find it difficult to keep the SAP slots filled. Overcrowding and lockdowns are significant factors. My staff is actively involved in program reviews to determine which SAP programs should be moved to locations that will improve our ability to place inmates in the slots.

The Department has initiated a Treatment Advisory Committee (TAC) comprised of nationally recognized experts to help in the development of new modalities and policies which will increase our inmate interest and participation in treatment. The TAC will provide input to the Expert Panel Report and build from its recommendations.

The recent enactment of Senate Bill 1453 holds promise for increasing aftercare participation. We believe the possibility of early parole discharge will be an enticing incentive to participate in treatment. Inmates who successfully complete both the in-prison SAP and 150 days of aftercare are eligible for early discharge.

Vocational Education

22. The Prison Industry Authority operates a variety of programs which are thought to be very good preparation for jobs on the outside, but the PIA reports to the CDCR Secretary and is separate from your division. Are you able to coordinate activities with PIA? If so, how?

PIA staff work very closely with Frank Russell, Director of DEVOP, and myself to collaborate on establishment of new programs and enhancement of exiting programs. One of the goals is to provide vocational education training that will support the mission of PIA and provide basic vocational skill training for inmates, increasing their potential success once hired by PIA. Since my return to the Department, I have found PIA to be a very dynamic, forward looking organization. PIA has reestablished one former Vocational Education program that has in the past had the lowest recidivism rate in the Department, the Marine Technology Training Center (Dive Program). PIA has also established a Carpenter pre-apprenticeship program in conjunction with the Carpenters Union (Local 46) which is a model I wish to duplicate throughout the State. Some of the recidivism reduction funding has been directed to fund this program. In addition,

as part of the Community Partnership Grants that CDCR allocated to the city of Los Angeles, I was able to capitalize on those resources by working with the city of Los Angeles to direct their efforts towards employment of PIA inmates trained as carpenters that return to the greater Los Angeles area. This is an excellent example of how we are partnering with PIA to reverse the Department's resources for the betterment of adult offenders. I have developed an excellent working relationship with Chuck Pattillo, General Manager of PIA, and will continue to look for opportunities to work with him.

23. Several years ago, some vocational programs such as upholstery and shoe repair were eliminated based on the conclusion that they would not provide meaningful jobs on the outside. Is there a standard currently in place to assess the appropriateness or value of specific vocational programs with respect to employment upon release? Is there coordination with vocational training programs at community colleges so parolees might continue their training to reduce recidivism?

The Department utilizes many resources in determining viability of vocational programs for inmate employment upon parole. These resources include the Employment Development Department Job Market Surveys, community college and trade school programs, labor union growth and apprenticeship statistics, professional trade publications and newsletters, and recommendations from institutional TAC members. A dedicated unit in the OCE is being established to conduct ongoing assessment of current and potential vocational trades that exist at the institutions.

Use of the sources discussed above has yielded results. CDCR has developed a number of programs that issue nationally recognized certificates and/or licenses. Some examples of these are: Automotive Service Excellence, National Center for Construction Education and Research, Pesticide Applicator Program, Outdoor Power Equipment Association, American Welding Society, Electronics Technician Association, Microsoft Office Specialist, Environmental Protection Agency and The American Board of Opticianry (Certified Optician Program).

At the local level, the resource utilized most by vocational instructors is their TAC. TAC members are active employers in the local communities that can provide vocational instructors with information about current labor standards, new technology, and potential employer information. Vocational instructors build a rapport with several TAC members specific in their trade in order to conduct training workshops for inmates or to refer parolees to potential employment opportunities.

At this point in time, coordination with community colleges is dependent upon the local vocational instructor's actions. However, I have initiated discussions with the Community Colleges Chancellor's office and directed OCE staff to begin coordinating with Community Colleges on vocational programs. Most vocational programs are aligned to industry certifications so that parolees can enroll in trade union schools and apprenticeship programs as an alternative to community college programs.

Senate Bill (SB) 618

In September 2005 the Legislature enacted and the Governor signed SB 618 (Speier), Chapter 603 that allows three counties to launch a multi-agency plan to prepare non-violent felons to be better positioned for a successful transition back into the community. San Diego County officials have been formulating a pilot plan that is expected to process six inmates per week by the end of March, 2007. The notion behind the program is that by writing up a plan for an inmate when he or she is in the county jail the inmate can immediately start with education or vocational programs or life skills classes as soon as they enter prison.

24. Has this program in San Diego begun? If so, please describe the results to date and the number of participants. Are other counties interested in pursuing the same idea and what is the status of those programs?

Program activities in San Diego County were initiated in February 2007. On February 2, 2007, the District Attorney's Office had the first offender enter the program by signing the Letter of Intent. As of March 30, 2007, 13 offenders were participating in the program: Nine males and four females. Two of the male offenders are now at RJD, and will be placed in the GED program to gain more educational background. The other seven male participants are still going through the assessment process. The four female offenders have just entered the program and are awaiting sentencing. Although the program plan calls for the processing of six offenders per week, county staff has processed fewer individuals each week as they review and refine their procedures.

Currently, there are no immediate plans to develop additional SB 618 sites. It was the intention of CDCR to select up to two additional counties to participate in the SB 618 program, with start up to begin by July 1, 2007.

Orange County was the only respondent to submit an formal proposal by the November 27, 2006 due date. Subsequent to the solicitation process we

determined that it would be in the best interest of the program to delay the start-up of SB 618 in additional counties. We believe that valuable lessons can be learned from observing the operation of San Diego County SB 618 Program for at least the next year. As a result, we contacted Orange County in January 2007 to communicate our decision to delay further implementation of the SB 618 program.

Parole and Community Partnerships

25. How do you coordinate program activities in your division with those of the parole division which has traditionally been in charge of its own educational programs? What changes, if any, have taken place in parole programs under your leadership?

There are a number of arenas in which information is shared among CDCR's many organizations. There are several routine meetings during which information is shared, in addition to staff and management participation on Ad Hoc Committees. Executive Staff meet bi-monthly to discuss current initiatives and challenges. Others communication venues include:

Monthly Regional Parole Administrators meetings. Participants include the Chief Deputy Secretary of Adult Operations, the Chief Deputy Secretary of Adult Programs and her program executives.

Quarterly meetings of the Law Enforcement Consortium (LEC). The LEC is comprised of local law enforcement, including Sheriffs, District Attorneys and Police Chiefs, and staff from the Division of Adult Parole Operations. Adult Programs staff also participates.

Though collaborative processes are working well, there is room for improvement. CDCR executives from Health Care, Adult Operations and Adult Programs have begun to routinely meet to engage in cross-functional problem-solving. This group, which includes representation from institutions, parole, program, and health care, will meet at least once a month to identify areas to develop strategies to enhance strategies to enhance the processes now in place. The next meeting will be in May. This effort will improve communication across organizations and programs. I am very optimistic that this recently-begun effort will yield positive results and improve program coordination.
Adult Programs played the pivotal role in decisions regarding the 2006-07 Recidivism Reduction Strategies Spending Plan. Among those approved programs were several in the parole area. They included:

- Female Residential Multi-Service Center: The objective of the Residential Multi-Service Centers program expansion is to address the issues of female parolees, resulting in their increased success in reintegrating into the community. Services deal with living a crime and drug-free lifestyle, employment status, family relationships, discharge from parole, and recidivism reduction.
- Sex Offender Transitional Housing: Sex Offender residential housing continues to be an on-going concern in the community. This component will provide a statewide system to improve departmental policies related to the placement of sex offenders in local communities thereby ensuring that the public safety is not compromised.
- Community Based Coalition: The *Community Based Coalition (CBC)* is a pilot program that seeks to provide collaboration between the CDCR's DAPO and CBC to provide housing and supportive services for parolees. The CBC will provide services such as housing, family and group counseling, case management services, substance abuse counseling, community outreach and referrals to partner agencies that will provide employment readiness and job placement, life skills development, treatment and recovery services, as well as assistance with transportation.
- Increased Clinical Services to Mentally Ill Parolees: The Parole Outpatient Clinic expansion will increase accessibility for parolees and facilitate the ability of parolees to be seen on a timely basis for treatment. This provides a continuum when coupled with the in-prison Mental Health Services Delivery System. It expands the numbers of parolees served.
- San Diego Day Reporting Center: This program addresses the specific needs of parolees at risk of violating their parole. It provides a myriad of services based upon a comprehensive intake and assessment process. The services include substance abuse counseling, relapse prevention, individual, group or family counseling, vocational and employment services, job search skills and life skills training. This program will augment the services available to San Diego parolees through the SB 618 program.

As the Chief Deputy Secretary, I have attended, and directed my staff to consult with DAPO program staff regarding various facets of their programs. I have conducted strategy meetings to facilitate discussions related to program service delivery to inmates and parolees. A major component of reducing recidivism directly relates to the continuum of services from the institutions to parole. Programs should begin upon reception, should change to meet the offender's needs, and continue to transition throughout the parolee's supervision period enabling successful discharge. I have consistently reinforced that criticality of continuity of services from institution to parole.

26. *One of the stated goals of your division, at the time of the re-organization, was to improve community partnerships. How can this be measured? What success have you had?*

A key component to my vision of increased programming opportunities upon reentry and the continuity of services is the establishment and strengthening of community stakeholder partnerships. A system with identified goals has been developed to gauge progress and ultimate success in this area. (Please refer to Question 1 for an overview of DCP performance measures.)

CDCR is initiating the following collaborative efforts which hold much promise for improving collaboration with communities and community-based service providers:

SB 618 – County Assessment Program: The SB 618 County Assessment Program is a collaborative effort between CDCR and San Diego County to develop and implement multi-agency plans to prepare and enhance nonviolent felony offenders' successful Reentry into the community. Program activities were initiated in February 2007, and as of March 30, 2007, 13 offenders have been brought into the program.

Santa Barbara Reentry Project: This pilot project in Santa Barbara seeks to "re-design" the reentry system in Santa Barbara County and to improve recidivism rates. The National Council on Crime and Delinquency, with support from the Gerbode and Roney Family Foundations, have assisted the community in developing a re-entry blueprint, defining specific roles for all stakeholders (including CDCR) and serving as a model for other California counties.

Faith-based Reentry Program at CIW: The faith-based, all-volunteer reentry program at CIW is a full time, in-prison reentry program designed to prepare and assist parolees in their adjustment to life back in their communities. Sponsored by Alpha USA, the program initiated operations at CIW in July 2006, and as of December 2006 provided services to an average of 126 offenders per month. The program targets female offenders with at least nine months remaining on their prison terms.

Prisoner Reentry Initiative Demonstration Grant Program: The US Department of Justice awarded CDCR $1.8 million over two years to provide 'behind the walls' support to offenders returning to four California communities: Fresno, Oakland, Sacramento and San Diego. Community and faith-based organizations in these four communities were awarded companion grants to provide employment-related reentry services to the same offenders serviced under the CDCR grant award.

Community Partnership Managers (CPM) Pilot Program: The three-year Community Partnership Managers (CPM) pilot program is designed to improve resource coordination and delivery to offenders – both in prison and in the community. The three pilot sites are Folsom State Prison, Avenal State Prison and San Quentin State Prison.

Intergovernmental Partnership Grants Program: Tentative award letters have been released to local government entities for intergovernmental planning activities collaborative partnerships to support innovative re-entry programming and improve offender outcomes.

Community-Based Reentry Initiative Grant Program: Tentative award letters have been released to Community-Based Organizations for the pilot projects grant program to demonstrate innovative, collaborative re-entry programming.

Hosted Statewide Collaborative Meeting in September 2006: As a follow up to several very successful collaborative meetings in 2005, I hosted a statewide community collaborative meeting in September 2006 at the Galt Training Center. The purpose of the meeting was to begin addressing the concerns of our community stakeholders around issues of access, communication and programming and inform them of my vision for programming in the Department. Staff from both institutions and headquarters participated with over 65 local stakeholders.

Reentry Summit: CDCR is planning a two-day Offender Reentry Summit in June 2007. Although the agenda has not been finalized, The "California Summit for Safe Communities: Building Collaborative Solutions for Offender Reentry and Reintegration" will address such topics as program development and delivery, and local, state and community organizations' roles as a collaborative team in offender reentry. The Summit will be advertised through the League of California Cities and the California Association of Counties in order to achieve the broadest invitation to all levels of government in California. We will mail invitations to a list of over 200 different community-based organizations (CBOs), both non-profit and for-profit, and faith-based organizations (FBOs). Similar to other states and national summits, this summit will support the development of knowledge and the collaboration within county entities, between local government and CBOs, FBOs, and with state agencies.

27. ***Previous CDCR directors have described the agency as "hard to help" because volunteers are often not sought out and processing them is often time consuming and cumbersome. In your view, has this situation improved?***

While the issues surrounding volunteers have not been fully resolved, we are developing several significant initiatives to improve our relationship with volunteers, which is critical to our efforts to expand program opportunities and decrease recidivism. These efforts include increasing staff sponsor funding to provide additional program opportunities in our institutions; revising and updating our volunteer orientation guide to inform prospective volunteers of the issues related to volunteering inside institutions; and finally, creating a 'Universal Identification' system to manage volunteer information and to clear and maintain volunteer records in 33 institutions. This system will significantly improve the ability of volunteers to access our institutions while maintaining the safety and security of the inmates and staff.

Please see Question 26 for initiatives in community collaboration.

Board of Parole Hearings

28. ***The Board of Parole Hearings (BPH) frequently finds inmates serving indeterminate life terms not suitable for parole because the inmates have not received programming which the board believes the inmates need prior to release. Does your Division of Adult Programs make any effort to track parole suitability denials based on unavailability of program or insufficient time spent in program?***

Information about parole suitability denials is recorded at the point of decision and is available in the inmate's central file. Classification and assignment decisions can make use of that information. However, that information is not being tracked in a systematic fashion so that it can impact overall program development and delivery. I will explore this issue with the various stakeholders, make recommendations and take appropriate actions.

29. Has any effort been made to communicate with the BPH about the type of programs board members believe inmates need to increase parole suitability?

Although CDCR's Adult Programs and BPH staff participate in weekly executive staff meetings that focus on a wide range of topics of mutual interest, I am not satisfied that CDCR's program units communicate effectively with staff of the BPH about the types of programs board members believe inmates need to increase parole suitability. I am, therefore, asking my Directors to meet with BPH representatives to evaluate the extent and effectiveness of our communication about the sorts of programs and responses that members would like to see made available to indeterminately sentenced inmates. I expect those discussions to result in recommendations about ways to improve that process and I will see to it that those recommendations are evaluated and implemented as appropriate.

Senate Confirmation
Frank Russell, Director
Division of Education, Vocations and Offender Programs
Responses to Senate Rules Committee Questions
April 10, 2007

General Questions

1. ***What are your goals and objectives as Director of Education, Vocations, and Offender Programs? What do you hope to accomplish during your tenure? How will you measure your success?***

My goal as Director of the Division of Education, Vocations and Offender Programs (DEVOP) is to promote public safety by preparing offenders and parolees for successful reentry. The DEVOP accomplishes this by addressing some the most dynamic criminogenic deficiencies of offenders: their needs for academic and vocational education. During my tenure, I have overseen the development of a process by which offenders are assessed at reception in order to determine their risks to recidivate and to identify the needs that will be the focus of interventions during their terms. That process will also assure that the offenders will have access to the identified interventions in a manner that makes sense in terms of sequence, duration and intensity.

I am also working with staff of the Division of Adult Institutions (DAI) to identify and create program space to match the need for educational and vocational programs. I am taking steps to hire qualified staff and to train and equip them to operate these programs. Success measures include increased literacy levels, awarded certificates of General Education Development (GED), high school diplomas, certificates of vocational readiness, job placements and completed college courses.

2. ***Please list the programs specifically within your jurisdiction.***

The programs specifically within my jurisdiction are:

- Academic education;
- Vocational instruction;
- Bridging education;
- College education;
- Alternative Education Delivery Models (AEDM) (distance learning and independent study);
- Preparation for reentry;
- Education Federal grants;
- Libraries.

3. ***Since the corrections re-organization occurred in July 2005, how do you believe CDCR academic, vocational and self-help programs and their delivery have improved? What barriers remain to program improvements?***

Since the California Department of Corrections and Rehabilitation (CDCR) reorganization in July 2005, academic and vocational instruction has improved as follows:

- The addition of 42 new vocational programs, 18 of which are in high security prisons;
- Standardizing academic and vocational curricula statewide;
- Increasing the use of educational assessments and tracking them in a database;
- Incorporating nationally recognized trade certifications;
- Promoting college programs and other distance learning opportunities;
- Using alternative methods (including cell-front) to provide educational services to offenders who are unable to attend traditional classes.

Significant barriers to program improvements include:

- Limited programming space in prisons;
- Insufficient custody staff to permit movement of offenders to classes and testing;
- Absence of an automated system of academic and vocational educational information;
- Difficulties in hiring and retaining instructors;
- Competing programming priorities involving issues such as custody concerns, health care, correctional industries, prison operations, camp programs and transportation;
- Assignment processes that vary from prison to prison;
- Inconsistent bargaining unit agreements from prison to prison;
- Incentives for offenders to assume non-educational assignments in order to earn funds via pay numbers for personal amenities;
- Ineffective systems for evaluating and tracking field programs;
- Vestiges of a culture that says educational and vocational programming are somehow less important than other aspects of prison management.

Although DEVOP staff often facilitate and support self-help activities, self-help programs are officially under the jurisdiction of the Division of Community Partnerships in cooperation with the DAI.

Prioritization of Educational and Vocational Programs

Throughout the 1990s and into early 2000s, academic and vocational programs at California's prisons decreased in size and scope. In recent years, however, the Department of Corrections and Rehabilitation has made a very public commitment to improving rehabilitative outcomes for inmates and parolees. This effort has become known as putting the "R" back into CDCR because the word "Rehabilitation" was added to the Department's name in the July 2005 re-organization.

4. What do you believe is the current role of academic and vocational programs with respect to the department's mission?

Academic and vocational programs are essential elements in the Department's rehabilitation mission. These programs contribute to public safety by promoting successful reentry. This is achieved by preparing offenders for employment, increasing their confidence and preparing them to negotiate many of the challenges that they will face in society. In its October 2006 publication, "Evidence-based Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates," the Washington State Institute for Public Policy identified vocational and general education in prison as two of the three most cost-effective programs for people in the adult offender system in terms of reduced costs to crime victims and taxpayers.

5. How has the "R" in CDCR been operationalized, i.e. through additional resources, organizational structure, etc.?

The increased emphasis on rehabilitation since the reorganization has been "operationalized" by means of:

- Clearer focus on the rehabilitation mission when it competes with the custody mission;
- Greater control of educational and vocational funding and staff resources;
- Greater influence over decisions regarding prison operations and departmental policy;
- Enhanced visibility of rehabilitation activities in the COMPSTAT process;
- Redistribution of staff and resources among the prisons in response to offender needs, management support, available space and staff recruiting opportunities;
- Aligning management of the Office of Correctional Education (OCE) with the five missions of the DAI.

6. ***What is your goal in terms of providing academic education to inmates? For example, is the goal to provide opportunities for all eligible inmates to earn a high school diploma or GED? Is it to improve reading levels? What specific outcomes will you be measuring?***

My goal, in terms of providing academic education to offenders, is to focus primarily on the needs of those offenders for whom it will most likely make a difference in their reentry success. For some offenders, this will mean teaching them to speak English or to read at the most basic level. For others, it will be to increase their general educational levels to the point that they can profit from vocational instruction or correctional industries experience. For still others, it will be to make progress toward certificates of GED, high school diplomas or college degrees and certifications.

With the advent of systematic assessment upon reception, the Department will be able to tailor its academic offerings to the identified needs of offenders. Beyond meeting the criminogenic needs of offenders, academic education also serves to keep offenders who are equipped to profit from non-traditional coursework productively engaged in terms of their own interests. This contributes to creating a prison environment that is safer for both offenders and staff. Specific measurable outcomes include:

- Progress measured by the Test of Adult Basic Education (TABE);
- Progress measured by the Comprehensive Adult Student Assessment (CASA) test;
- Number of certificates of GED awarded;
- Number of high school diplomas awarded
- Number of academic classes completed, including college courses.

7. ***What is the goal of the department in terms of providing vocational opportunities to inmates?***

With respect to providing vocational opportunities to offenders, the Department's goal is to provide employable skills to offenders who are at moderate or high risk to recidivate and for whom lack of employable skills has been identified as a contributing factor to their criminal behavior. The CDCR provides job-market-driven, industry appropriate and community-focused occupational programs.

The OCE has aligned its carpentry trade curriculum and certifications to match those in the National Center for Construction, Education and Research (NCCER). This allows employers to review each student's accomplishments and certifications from an on-line database and aligns OCE vocational training to national standards. Other national certifications from the American Welding Society (AWS) and Automotive Service of Excellence (ASE) are also issued to students by authorized OCE instructors. Most recently, OCE collaborated with the California Board of Cosmetology to provide testing and licensing to vocational program participants.

8. Knowing that CDCR does not have the resources (funding, staff, etc.) necessary to meet the academic and vocational needs of every inmate, what are your short and long term strategies to address this unmet need?

With the implementation over the next 15 months of standardized assessment at reception of offenders' risks and needs, the Department will be able to determine more accurately the extent to which additional resources may be necessary to address their unmet academic and vocational needs.

The DEVOP is working with prison management to determine where additional programming space can be acquired. This may be made available by changing the use of existing space, building new space or by means of non-traditional scheduling. The CDCR currently offers educational opportunities to 5,938 offenders who can function well outside the traditional classroom via the AEDMs in 17 prisons, so far.

We are also working with personnel services and recruitment units to improve our success at filling teacher, instructor and librarian positions and to increase the available candidate pool by making use of additional credential types. In order to improve staff retention, we have requested redirection of resources to achieve parity in compensation and schedule with staff of the Division of Juvenile Justice (DJJ). If we get to the point that we cannot address the identified criminogenic needs of offenders for academic and vocational instruction because of limited staff, space or other resources, we will request augmentation.

Assessing Educational Needs

9. How are inmates' academic and vocational needs assessed? Approximately what percentage of inmates receive this assessment and when?

Currently, offenders are scheduled to receive a TABE reading assessment at the Reception Center (RC) prior to their placement in a General Population (GP) institution. The TABE reading score is utilized at the GP by the Correctional Counselor I (CCI) and an education representative during the Initial Classification Committee (ICC) to assist in determining if the offender needs academic remedial programming, GED or high school, or if he/she would benefit from a vocational program. Consideration is also given to the interests expressed by the offender as well as his/her release date to ensure the educational program can be completed prior to parole.

Once assigned to an academic or vocational program the offender will receive a TABE full battery on math and language to complete his TABE history and assist the teacher to assign an appropriate level of work. Students assigned to academic programs also receive CASAS testing to determine academic aptitude as well as employability needs.

Some RCs have been successful in administering the CASAS Life Skills test as a component of the overall Bridging Education Program (BEP) but its implementation has become secondary to the COMPAS risk and needs assessment Phase I implementation. The TABE, CASAS, and the vocational Interest Determination Exploration Assessment System (IDEAS) are the three major components of the Individualized Comprehensive Life Plan (ICLP). CASAS testing will continue at its current RC sites and will be expanded in the coming fiscal year along with Phase II of COMPAS.

10. ***Given that you do not currently have enough classes or programs for every inmate, how do you determine which inmates should be enrolled in academic and vocational programs and who makes this determination? How do you determine the priority of inmate placement in programs? If this varies by institution, please explain.***

An offender's enrollment into academic and vocational programs is a cooperative effort between the institution's ICCs, the Education Department, and the offender. Many factors are considered in the appropriate placement of an offender into an education program including amount of time to serve, custody classification, previous education, work/trade history, TABE score, and the ability to perform the essential functions of the assignment.

The offender's priority for placement into an academic or vocational program is more sensitive to the proximity to the release date than it is to the length of time on a waiting list. That is why an inmate may be enrolled ahead of someone with more wait list seniority. Volunteer education programs such as Prerelease, independent study, distance learning, or college programs do not have established priorities. Offenders participate on a first-come, first-serve basis depending upon the program availability. Variances in the assignment process between institutions occur as a result of the number and types of educational programs offered, the offender's accessibility to the programs and the ICC's assessment of the offender's needs.

Access to Academic and Vocational Programs

11. ***Based on information provided by the department, about 39,000 inmates are participating in academic programs as of March 2007. This represents less than 23% of the inmate population. Less than 9,000 (under 6%) were participating in vocational programs. What are you doing to expand the number of academic and vocational programs in the state's 33 prisons?***

The use of the AEDM program has allowed increased offender access to academic programs, although some offenders participating are counted as enrollments rather than

actual work assignments. This includes offenders who participate in supplemental types of educational programming such as the Correctional Learning Network (CLN), peer-tutoring literacy programs and other college courses. The OCE is working cooperatively with the Computer Statistics (COMPSTAT) unit staff to ensure that assignment and enrollment figures are recorded accurately.

The use of alternative work schedules for education staff have also allowed greater access for offenders to work assignments, essentially doubling the potential for student enrollments. Education programs can operate seven days per week utilizing the same classroom space, textbooks, tools, and equipment by operating one program Sunday through Wednesday morning and the other program operating Wednesday afternoon through Saturday.

Funding from the Recidivism Reduction Strategies Budget Change Proposal (BCP) has allowed OCE to add 42 new vocational programs this fiscal year, as well as 22 assessment teachers in the RC's and 16 academic teachers for Enhanced Out Patient (EOP) offenders. Additionally, OCE has authorized each institution to utilize a current academic teacher specifically for independent and distance learning education programs. As a result, GED, high school, community college and correspondence course enrollments have increased to 5,938 offenders. As we determine actual offender needs via assessment at reception, we will be in a position to realign the course offerings based on available space, scheduling and staffing; and to request additional resources, if necessary.

12. ***Based on information provided by the department, five prisons do not have any inmates currently enrolled in vocational programs. Please explain what barriers exist in implementing these programs.***

There are currently no vocational programs at the four RCs: Richard J. Donovan (RJD), Wasco State Prison (WSP), North Kern State Prison (NKSP), and Deuel Vocational Institute (DVI). RC inmates are unable to participate in vocational programs as they have limited movement, must undergo medical evaluation, custodial and records review and educational assessment within a 60-day period prior to endorsement to a GP institution. Each of the RCs have a small GP that serves as a support to the institution's daily operations; such as food preparation, laundry and maintenance. RJD will soon be activating up to four vocational programs because it is a site for Senate Bill (SB) 618 participants. The four programs scheduled for implementation are Mill and Cabinetmaking, Welding, Machine Shop and Electronics-Cable Networking.

High Desert State Prison (HDSP) is a high security institution with a small RC. The institution lost all vocational programs during the Budget cut of 2003/2004. However, HDSP is in the process of establishing three vocational programs, Building Maintenance, Janitorial, and Automotive Repair, and is scheduled to have offenders assigned to those courses by May 2007.

13. ***In some states, correctional agencies have contracted with the state university system to provide vocational training. Have you considered alternative avenues to provide vocational programs?***

We have considered contracting with other governmental or private entities to provide educational and vocational training. However, such methods would face most of the same problems with which our current delivery system must deal, e.g., space, custody concerns and assignment processes. We might also face legal impediments because of the labor relations ramifications of outsourcing. Some services outside the scope of traditional academic and vocational education such as job placement are provided under contracts with other agencies.

14. ***What is your estimate of the number of inmates who speak little or no English? Please describe how inmates who do not speak English are included in programs.***

The CDCR does not track the number of offenders who speak little or no English. It is estimated that less than 5 percent of the offender population speak little or no English. These estimates are derived from institutional tracking of the use of language interpreter services. On January 30, 2007, there were 1,274 offenders assigned to English Language Development (ELD) courses. The CDCR provides educational opportunities for non-English speaking offenders through the ELD/English as a Second Language (ESL)/Limited English Proficiency (LEP) competencies integrated into the Adult Basic Education (ABE) I Curriculum.

Vocational program curriculums provide literacy components to allow non-English speaking offenders to be assigned to programs. Sometimes other offender students translate for English-deficient learners. The CDCR also uses institutional literacy labs to provide expanded educational access for non-English speaking students.

15. ***Please describe the availability and provision of special education programs in California's prisons. How are inmates assessed for these programs?***

There is no "formal" Special Education Program as required under federal regulations that apply to adults. However, the three court cases (Clark/Armstrong/Coleman) have led to the development and implementation of special programs to assist offenders with developmental disabilities, physical disabilities, and those housed in mental health facilities.

All offenders are screened at the RC for developmental and physical disabilities. Offenders with learning disabilities who are either self-identified, diagnosed by a specialist before entering CDCR or are found to be previously enrolled in Special Education school programs, are identified and their status is documented.

The Education Department's staff request the Individualized Education Plans (IEPS) from the last school attended.

The OCE has successfully met the court monitoring Developmentally Disabled Program (DDP) and Disability Placement Program (DPP) audit team's standards for the past five years. DDP teachers use the Woodcock-Johnson Test and the Brigance Assessment of Basic Skills for specific assessment. EOP services have been provided as a proactive step toward providing education to offenders with special needs. These services are implemented in designated EOP units.

Coordination with Custody Staff

A common complaint from inmates is that they are forced to transfer to a different CDCR institution before they can complete specific vocational or educational programs in which they are enrolled. The programs they participated in at one institution do not exist in the place where they are transferred, or they are full and the newly-transferred inmates go to the bottom of the waiting list.

16. Transfer decisions appear to be based heavily on custody issues, with little or no consideration for program progress. Do you believe this is a fair assessment of the current situation? If so, is any effort being made to change this situation?

Bed space and offender safety concerns often take priority over programming, due in large part, to overcrowding. The current level of overcrowding and lack of program space has a negative impact on most prison operations including the continuity of educational programs for the offenders. The Governor's proposed prison reform plan includes additional bed and program space that will improve the quality and continuity of an offender's educational program.

Some steps are taken to reduce the negative impact of overcrowding. Transfer decisions are based upon a myriad of factors, i.e. classification score, enemy concerns, medical/psychiatric needs, and institutional and offender program needs. Current policy allows an offender to be retained for up to one year at their current institution, upon the institution's request, if the offender's classification score has changed by no more than one custody level and the individual is in a program that is not offered at another institution. Education staff participate in the classification process and may advocate keeping an offender in a program until completion. Education staff may also expand vocational offerings so that offenders can continue vocational training at different custody levels.

17. How are you informed of lockdowns or modified custody programs that prevent inmates from attending classes? How are you informed of custody decisions that reduce the time inmates spend in classes because they are not released from their living units on a timely basis?

Each school principal submits a daily report detailing the class closures. Reasons for closures are identified on the report. Lockdowns are noted and notes of unusual occurrence are described. The OCE is currently developing a program that summarizes this information for closer monitoring. Monthly reports will eventually be shared with the DAI. The DEVOP is asking for copies of DAI Program Status Reports (PSR) which will provide pertinent information; such as, identifying the reason for lockdown or modified program; what programs are closed as a result of the lockdown or modified program; and what steps are being taken to bring the institution back to normal operations.

Coordination with PIA

The Prison Industry Authority employs hundreds of inmates in many CDCR institutions, but it is a separate entity with a board of directors chaired by the CDCR Director. Many of the jobs it provides are described as excellent training for work on the outside.

18. How do you coordinate with PIA?

Coordination with the Prison Industries Authority (PIA) includes regular meetings among PIA and OCE staff to examine and clarify long-term goals and immediate needs regarding market trends, technology advances, mission changes at institutions, legislative mandates and physical plant capabilities. Information is shared in order that vocational education programs provide certification training programs or new technology trade skills related to the specific needs of PIA. The units cooperate so that the Trades Industries Experience (TIE) Programs ensure that offenders gain viable trade related job skills such as in the programs offered at California State Prison–Corcoran, California State Prison–Solano, and Valley State Prison for Women. Currently, OCE assists PIA by providing applicable testing and certification in specific trades, and by providing GED instruction and testing.

Re-entry Planning

Assisting an inmate to transition from custody back to society is known as "pre-release" programming within CDCR. This program is voluntary and is typically offered within six to twelve months of release. Some inmates are reluctant to participate because they must leave their paid jobs within an institution to attend. Since the corrections re-organization, top CDCR officials have often referred to a pre-release effort that should

begin immediately upon intake rather than waiting until the final few months of an inmate's incarceration.

19. What is the current status of pre-release programming? What components should it include to reduce recidivism? What effort is being made to make it consistent across institutions? How are inmates being encouraged to participate in this voluntary program?

Pre-release programs are offered at all 33 institutions. There are 50 designated pre-release teachers. The Pre-release curriculum is intended to provide offenders with the skills necessary to transition from incarceration to parole with a greater likelihood of success. The curriculum is competency-based programming and has a strong cognitive component. It emphasizes the principle that "Change is Possible." Pre-release curriculum components include:

- Breaking Barriers curriculum;
- Job acquisition skills training;
- Transitional housing resources;
- Food and clothing resources;
- DMV identification cards or driver's licenses;
- Child support /parenting resources;
- Veteran issues.

The pre-release curriculum is standardized statewide. A Pre-release curriculum advisory committee reviews and modifies the curriculum when necessary. The OCE provides statewide training on major curriculum changes and provides periodic training for new Pre-release teachers. The OCE is also implementing compliance reviews to ensure fidelity to the standardized curriculum. Offenders are encouraged to participate in Pre-release programs by means of institution television announcements and by notices sent to offenders scheduled to parole within 120 days. While the preferred Pre-release program is by assignment to a Pre-release class, when classroom space is full, or access to instruction is not possible, the Pre-release teacher prepares packets of information for interested offenders. Some Pre-release teachers use workshops and seminars to deliver information to offenders instead of requiring them to attend the traditional three- or six-week class.

20. What role do educators currently have in pre-release planning? Are there educational (academic and/or vocational) strategies in place to help guide an inmate during his/her transition from prison back to their community? Please describe current or future efforts in this area.

In addition to the use of the Pre-release curriculum within each institution, there are also three Community Re-entry Liaison Teachers located in Alameda, Sacramento and Fresno counties. These teachers provide educational, vocational and employment

re-entry services for offenders paroling to those counties. The teachers visit the Re-entry classes within the institutions and speak to offenders who are near parole to advise them of opportunities available upon release. Once the offender is on parole, the Community Re-Entry Liaison teachers may enroll parolees in training schools, assist with Pell Grant applications, and refer parolees to other departments such as the Employment Development Department, Department of Human Assistance and the Department of Motor Vehicle. The Re-entry staff assists in job placement services with employers within the community.

Another area of support for the successful reintegration of parolees back into society is the SB 618 program in San Diego County. The OCE has supported that program with a teacher who will perform the role of Prison Case Manager (PCM). The PCM will work with San Diego governmental agencies to ensure that the offender has access to in-prison programs to assist him/her in their preparation to re-enter society. The OCE expects that the Expert Panel, whose report is expected by fiscal year-end, will provide important guidance regarding the future of Pre-release programming.

Quality and Effectiveness

21. How do you determine which academic and/or vocational classes should be provided at each institution? Who is responsible for this determination?

The responsibility for determining which academic and/or vocational classes should be provided at each institution is currently a collaborative effort shared among the school Principal, the prison Warden and the Superintendent. All schools offer a baseline of academic programs including ABE and GED. The number and types of programs offered are determined by summary TABE information, space availability, waiting lists and offender accessibility to programs. In related steps, the OCE:

- Ensures that the trades are job market driven and industry certified;
- Is in the process of modernizing its vocational equipment;
- Has hired a staff to review the current vocational programs and to establish a plan of action for future growth and cuts (if necessary);
- Has created two positions to monitor vocational education, compare our offerings with workplace opportunities and track student completions.

22. How do you monitor the quality and effectiveness of educational and vocational instruction including "bridging" instruction? Who is responsible for monitoring and evaluating these programs?

The responsibility for monitoring the quality and effectiveness of the educational and vocational programs at each institution is shared. The Wardens provide direct supervision to the Principals; however, the Assistant Superintendents in the OCE

provide functional supervision. Every school, except our newest, located at Kern Valley State Prison, is fully accredited through the Western Association of Schools and Colleges (WASC). A compliance audit unit is being established to perform audits of each prison school at least biannually.

23. What role does the school principal at each institution play in this effort? How is that person selected and trained, and who monitors the work of that person?

Each prison's school Principal plays a key role in the effective delivery of the educational program. Each Principal is responsible for recruiting and hiring educational staff and for the quality of the educational program, both academic (including college) and vocational. The Principal and Vice Principals in academic and vocational programs ensure that teachers/instructors are providing training and that they perform their duties satisfactorily. Principals are evaluated jointly by prison and OCE management.

24. What is the current vacancy rate for education positions? What efforts are in place to address this challenge? What special training do teachers receive to assist them in working inside an institution?

The vacancy rate for CDCR Education has hovered between 18 and 20 percent for the past three years. Efforts to address this challenge include establishing a partnership with Work Force Planning to streamline the application and hiring process for teachers. There is also emphasis at each school to conduct tours and to have teachers staff job-fair booths. Currently, the Legislature is considering the teacher pay parity BCP, which addresses the disparate pay between DJJ and Adult Education in CDCR.

The OCE is exploring the use of alternative credentials, such as that for Adult Education and temporary credentials. When teachers are hired they attend a 40-hour initial training program introducing them to the job, regulations and culture. This training is followed by 30 days of on-the-job training in which, typically, a teacher starts teaching and a mentor is assigned. Additionally, teachers are encouraged to join the Correctional Educators Association (CEA). This nationwide professional association is one of a host of organizations available for teacher membership. In the next year, more resources will be devoted to staffing the supplemental application process, to creating an on-line recruitment and application process, and to disseminating recruitment materials.

25. Each institution has a library and often satellite libraries in the various yards, a librarian and several library clerks. What effort is made to include librarians in literacy instruction? What effort is made to encourage inmate tutoring programs that promote literacy?

In accordance with Penal Code Section 2053.1, literacy services are to be made available to 80% of the eligible offender population. The CDCR policy identifies eligible offenders as those who read below 9.0 grade level and who do not have a high school diploma, GED or at least two years of college. The CDCR Literacy Plan requires that each institution have a literacy plan and a literacy committee. The purpose of the plan and the committee is to identify literacy delivery methods and locations within the institution. Literacy delivery methods include Lau Bach trained offender tutors, community volunteers, library literacy services, and the use of institutional media, such as, specified TV channels through which literacy programs are aired and accessed by all offenders that have televisions in their housing unit or in common living areas (day rooms).

The libraries have high interest, low level reading materials to meet the needs of offenders with low reading levels. The law library clerks are available to assist offenders in all areas of the library. There are also Library Technical Assistants that are specifically charged with assisting offenders with developmental and learning disabilities. Many institutions use trained offender tutors to provide outreach programs to the institutional activity areas, including living units. Literacy services are also supplemented by Federal programs that serve the "neediest of the needy" [Title 1 of the Elementary and Secondary Education Act (ESEA)] by means of Teacher Assistants and Computer Assisted Instruction Labs. The CDCR is continuing to build library literacy services in shelf space no longer needed since the implementation of electronic law libraries. There are plans to establish additional decentralized literacy classrooms that would assist vocational students with literacy requirements.

The most extensive project implemented this year it the placement of a TV Specialist in every institution who will identify, develop, and deliver educational services using multi-media; from recording teacher presentations to showing commercial materials. The goal is to reach as many offenders as possible using distance education methods/strategies.

26. ***The current State Budget provides $900,000 for creation of an expert panel to make recommendations on how to improve delivery of educational and vocational programs for inmates and parolees. What role do you play in assisting them, if any?***

I have assisted the Expert Panel by attending the deliberations of the full panel and of the program design subcommittee. In person, I have answered questions regarding prison and parole operations and I have arranged for other information to be provided and other questions to be answered as needed.

Post-Secondary Education

27. What is the goal of the college programs? Is it for inmates to receive an associate of arts or bachelor's degree prior to release? If this is the goal, how successful have you been in meeting it?

The goal of our college programs, primarily operated through the California Community Colleges and Patten University at no cost to CDCR, is to provide the opportunity for offenders to experience success in postsecondary education activities. The target is for offenders to make progress toward the associate degrees and to subsequently work on earning associate- or bachelor- level degrees upon parole. The program has grown from 200 offenders to over 6,000 offenders. There have been 130 Associate Degrees, three Bachelors Degrees and one Masters Degree earned since the pilot program began in 2004.

At Ironwood State Prison (ISP), over 50 offenders will graduate with an Associate of Arts (AA) Degree in June 2007. The Community Colleges Chancellor's Office has information indicating that CDCR offenders made greater academic gains than other adults enrolled in the same programs. Twelve of our Ironwood students were placed on the Dean's List last spring. We are moving forward on a plan to place postsecondary school coordinators in each prison. As a result, we expect further increases in enrollments.

28. Some inmates have access to typewriters, but most inmates who enroll in college correspondence courses must find courses that will accept handwritten papers because they have no access to word processing. This has become increasingly difficult as more colleges require access to word processing. What effort, if any, is being made to address this situation?

The DEVOP is working with CDCR's Enterprise Information Services in an effort to revise their policy which prohibits offender use of computers for word processing outside of vocational Office Services and Related Technologies training classes. We are also investigating word processing technologies that can be used safely in libraries and day rooms. When a satisfactory solution is found, we will request additional resources to procure word processing equipment consistent with space and supervision considerations.

29. Ironwood State Prison has operated a successful partnership with the Palo Verde Community College District for several years, allowing inmates there to access community college programs through distance learning. A number of inmates have earned A.A. degrees through this program, which has also had a positive effect on inmate behavior at the institution. Previous CDC directors have assured the Rules Committee that this program would be replicated. What efforts have been made to do so?

The California Community College Program was formally implemented at nine pilot prisons in June 2005. In June 2006, the pilot was informally expanded to the remaining 24 prisons. All 33 prisons are now receiving services through the California Community College system. As stated previously, the program has grown from 200 to approximately 6,000 estimated participants. We are also deploying 33 postsecondary school coordinators that will likely result in even greater utilization. A key to the success of the ISP-Palo Verde College program has been the availability of Educational Opportunity Program funds and counselors. Few other community colleges have been willing to make those funds or services available for offenders.

Accreditation

30. Please describe the accreditation process for academic and vocational programs. How many of your institutions run accredited programs?

The accreditation process used by the CDCR is the process established by the WASC. The WASC accreditation process has three stages: the self-study, the visit, and the follow-up. This is the same process used by public high schools. Thirty-two of our thirty-three schools are currently accredited by the WASC. Our newest school at Kern Valley State Prison (KVSP) has not yet been accredited.

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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 25, 2007

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

MEMBERS ABSENT

SENATOR DON PERATA, Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

LLOYD S. THRONE, Director
Department of Community Services and Development

GEORGE KOORTBOJIAN, Former President and Board Chairman
Redwood Community Action Agency

LOIS J. CARSON, Director
Community Action Partnership
Riverside County

OSCAR CHAVEZ, Acting Executive Director
Community Action Partnership of Kern

RAUL MEYRELES, Executive Director
La Cooperativa Campesina de California

TIM F. REESE
California/Nevada Community Action Partnership
State Association

CHARLES R. HOPPIN, Member
State Water Resources Control Board

MIKE FALASCO
Wine Institute

GARY WOLFF, Ph.D., Member
State Water Resources Control Board

GEORGE SOARES
Alliance of Western Milk Producers

JACK HAWKS, Executive Director
California Water Association

ANGELA HAREN
California Coastkeeper

BRIAN REES
Santa Ana Watershed Project Authority
California Dairy Campaign
California Farmers Union

OWEN O'DONNELL, Chair
Baykeeper

BERT MICHALCZYK, General Manager
Dublin San Ramon Services District

JULIA MACLAY
Santa Clara Valley Water District

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CHAIRMAN ASHBURN: We can begin with Item 2A, which is Lloyd S. Throne, Director of Department of Community Services and Development.

Mr. Throne, come forward. Welcome.

MR. THRONE: Thank you.

CHAIRMAN ASHBURN: We will invite you to give an opening statement, to introduce any guests or family members you may have with you, then the Committee may have some questions. We will take witnesses for and in opposition to your appointment.

Please begin.

MR. THRONE: Thank you.

Members of the Rules Committee, good afternoon. My name is Lloyd Throne. It's an honor to be with you this afternoon.

Over 40 years ago, and I hate to admit that number, as a young man I was a member of the first rural community development group that went to Columbia, South America in the Peace Corps.

I might add that my roommate there was Congressman Sam Farr. It just turned out like that.

And my reason for going 40 years ago was wanting to make a difference, and I believed the President when he said, "Ask not what your country can do for you, but what you can do for your country."

CHAIRMAN ASHBURN: I'm going to interrupt you,

and we'll call the roll for the Committee so that we can establish our quorem.

[Thereupon a quorem was established.]

CHAIRMAN ASHBURN: A quorum is present. We will go back briefly to Item Number 1, reference of bills.

[Thereupon the Committee acted upon legislative items.]

CHAIRMAN ASHBURN: Mr. Throne, please continue.

MR. THRONE: I think I was quoting JFK there, "Ask not what your country can do for you, but what you can do for your country."

That was over 40 years ago. I believed it then, and I believe it now. Forty years ago I learned about social equity, and I learned that compassion is a nice word, but it has to be tangible.

In the intervening years, it's been my honor to be Executive Director of three fairly large nonprofit human service agencies. I was a federal supervisor for Region 9 in San Francisco. I worked for two states as a management consultant, for the State of California and State of Colorado.

Last July, I was honored as being appointed Director of the Department of Community Services and Development. And I might add that I'm only the second director in 43 years that came to this position with experience as -- executive director experience on a local level.

I'd like to acknowledge this not so much because Lloyd Throne was appointed, but because it gives value to my

profession.

CSD is a small state department by California standards. I receive 98 percent of its funding from federal block grants: from HHS, Department of Energy, a little bit from HUD, and $3 million from the State of California General Fund, which operates the Naturalization Program.

I would not be here today without the support, and strength, and courage of my wife, Beth, and my -- and our children, one of which is here today, Rebecca, who lives in San Francisco. I'd like to thank them for their support and love.

Commuting to Eureka every weekend is not for the faint of heart or the driving impaired.

I would also like to thank the network, the hundred agency network in California, some of whom came here today.

Our 63 grantees, CSBG grantees, and 41 energy providers have been on a funding roller coaster for over 40 years. The community service block grantees have been zeroed out time and time by some administrations, which time and time was overturned by huge bipartisan support in Congress. The energy providers have faced cutbacks over the years, yet through innovation, partnerships, collaboratives, huge levering of federal funds to the tune of $23 to each block grant dollar, our network is alive, well, and doing better than ever. As a matter of fact, our network serves 45 percent of all the low income in the State of California.

My goals are fairly simple. They're based upon people-based strategies.

Number one, further improve the effectiveness of our network agencies.

Number two, further improve the skills, knowledge, and abilities of CSD staff.

Three, expand the capacity and resources to meet low income needs.

And lastly, to further prepare the community network for disaster assistance.

I offer you and I offer the State of California my passion, my energy, my knowledge, and my experience to make CSD the best it can be. It's a privilege to be here today, and I would be most happy to answer any questions that you might have.

Thank you.

CHAIRMAN ASHBURN: Thank you, Mr. Throne.

I think we're impressed by your background, experience, and your enthusiasm to do this job, and appreciate that statement.

Any comments or questions from the Committee? Senator Padilla.

SENATOR PADILLA: Thank you very much, and congratulations again on the appointment. Appreciate your remarks here and the opportunity to meet with you in my office.

I wanted to just revisit a couple of the areas that we spoke about previously and just briefly on the CSBG component especially. I come to this with seven-and-a-half years of local city council experience behind me, so not just on the CDBG side, but on the CSBG side.

I'd love to get your thoughts for the Committee on how you can go about improving upon the current collaboration and coordination that exists between your responsibilities at the state, and effort that go on in cities and counties throughout the state?

MR. THRONE: Thank you, sir.

Fifty percent of the grantees, the CSBG grantees, in the State of California are public entities. Fifty percent of them are private nonprofits.

We're the only state in the country that's divided right down the middle that way. The majority of states in the country, the great, great majority are nonprofit agencies.

And I only say that because the nonprofit is going to be handling collaboratives and partnerships differently than the public agency is going to handle it.

I mentioned in my brief remarks that we get $55 million out of $630 million, "we" meaning the State of California and CSBG. The total gross leveraging of our CSBG grantees is $1.25 billion. So, that's a $23 leverage to each CSBG dollar.

And I'll give you an example of my agency in Eureka. We only got $212,000 CSBG, but we're a $20 million agency. And what -- how you do that is through partnerships with the private sector, through other nonprofits, and of course through the public sector.

Many of our grantees have been eminantly successful, and a lot of those in your district, Senator.

A nonprofit or a public human service agency in the year 2007 cannot be isolated from the other sectors of society. So, what we have learned, what our network has learned, and we're still learning, is how to form more collaboratives, more partnerships in our various areas. And I say in the public sector, as the City of L.A. is and the County of L.A. is, and they receive together a total of about $14 million dollars. They have built-in collaboration with the other departments within the City and County of L.A. They also have -- the County of L.A. also has 100 subgrantees who are nonprofits. So, the public -- the public entities have this collaborative power built in.

The nonprofits, on the other hand, the successful nonprofits, and we have a whole bunch of them, operate a lot of public sector programs. For example, and I'll go back to my 21 years in Humboldt County, we did the CDBGs, since you mentioned Community Development Block Grants, for the County of Humboldt. And we did all the writing, all the planning, all the operational parts of CDGB. We also did it for every muncipality in the County of Humboldt. And many of our network agencies do the same thing.

So, in short, the answer to your question is, increased collaboratives, increased knowledge of what's available, especially on the state level, because a network is very, very good on a local level and on the federal level, and more collaboratives, especially with the private sector.

SENATOR PADILLO: Thank you.

The other area of questions and concern has to do

with the Naturalization Services within your purview.

Just to create some context here, can you remind us how many residents of California are in this legal permanent resident?

MR. THRONE: Yeah, the estimate is from 2.7-3.3 million legal residents in the State of California.

SENATOR PADILLA: So, roughly 3 million, with a margin of error here of about 10 percent.

And the population as a whole is nearing 40 million, so not quite 10 percent of the statewide population, but still a significant number in that context.

Over the past 10 years, the number of individuals that this program has been able to help?

MR. THRONE: Yeah, it started in 1998, and it's served -- it's given the tools, via English as a second language, the tools to become citizens to approximately 100,000 legal residents in the State of California.

This year, as you know, we received $3 million from the General Fund, and our target for this year is 11,000 people.

I might add, sir, that we have 34 partners doing this in the State of California.

SENATOR PADILLA: So, we are hoping for 11,000. We know that the potential pool out there is roughly 3 million. With 11,000 per year, it's going to take us a while to get there. Not in your life time and not in my life time at this rate.

And I say that only to bring light to it.

Everything from the social and cultural reasons for wanting to help permanent residents become citizens, to the civic and economic reasons, frankly, for encouraging permanent residents to become citizens. Citizenship is, you know, more and more a requirement for various programs and this state's ability to leverage federal funds.

While I appreciate the Governor including the 3 million in his proposed budget, I think there's a lot to be said for seeking to not only increase the budget line item, but increasing the capacity and our performance in this particular arena.

And I just wanted to ask you again for the record if that's a priority that you share, and what thoughts and ideas you might have about pursuing this more aggressively?

MR. THRONE: Well, I share your goals as far as streamlining and coordinating services for legal residents.

As I said, we have 34 partners throughout the State of California dealing with all ethnicities in California.

We started off a process, a grant process, and we had 32 grantees. And I felt strongly enough about this program to fund two more in Southern California out of -- out of my limited discretionary monies.

So, I think that probably says it all, that it is important. And a lot of our member agencies and our network do deal with legal residents all the time.

I might add to that that one of our really fantastic agencies is La Cooperativa and with their member agencies. So, CSD is joined by the hip to these types of

programs.

SENATOR PADILLA: Great, and I'm sure they are wonderful partners.

Do you see any reason why we shouldn't advocate or seriously work towards an increase in that program's budget?

MR. THRONE: I as a director for nine months, coming from the local community, I've learned some things. And I think one of them I've learned is, I really can't take a position on administrative policy.

But again, I support the goals of streamlining services for legal residents, and I surely support the coordinating of the services to them. And I share those goals.

SENATOR PADILLA: Thank you very much.

CHAIRMAN ASHBURN: Senator Cedillo.

SENATOR CEDILLO: I think Senator Padilla asked most of my questions.

There is a proposal for an Office of Immigrant Affairs, and it would be under your purview. Give me your feelings on that.

I just think in a state like California, with such diversity, and such a large community of people that can and should be citizens, and also with the imminent or anticipated immigration reform, that we should do more about constructing some infrastructure to facilitate the process of citizenship.

So, I'm interested in your views and ideas on that?

MR. THRONE: I am familiar with SB 1, Senator.

I've read it.

As I mentioned to Senator Padilla, I do support the goals. I truly do. And I don't know how much more I can do in the nine months I've been here than add two more partners to the 32 that was out of the $3 million that's out of my discretionary pot.

I'm familiar with the Office of Immigration Affairs that's in your bill. And, you know, again I share your goals.

And all I can say is that in the nine months I've been here, spending decades on the local level, I really can't take a position on this bill or that bill, but I do share the goals of this bill.

SENATOR CEDILLO: I appreciate that.

Other than your nine months, what about your vision? How would you see this working? What type of vision do you have about it?

MR. THRONE: Well, my vision is, as I said, we have 32 grantees with $3 million. I put two more in there.

I would love to see it cover the whole state, but that's way out of my purview. I would love to see energy providers, and I'd love to see, you know, homeless programs and all sorts of programs covering the state, too.

But again, I share your vision. I read your bill.

My grandparents were -- were immigrants. I think most of us were.

SENATOR CEDILLO: Sure.

MR. THRONE: So, I surely understand where you're coming from.

And I do understand -- the part of SB 1 that jumps off the page to me is the coordination of services, because a lot of services in the State of California, not just this, but a lot of the services need more coordination. There's no doubt about it.

And coming from the local level, and that's my field of expertise, it took us 12 years to put together a large homeless facility in Humboldt County. I have to brag, it just won the award from the United States Council on Homelessness. Twelve years, eight funding sources for one homeless facility. Everything from CDBG, on and on, general funds, county funds.

So, the more we can coordinate the various services so we can avoid duplication, the better off we are for everything.

SENATOR CEDILLO: I applaud you on your efforts around the homelessness. We have several projects that we're working on in that area as well.

MR. THRONE: Thank you, sir. I'm familiar with them in Los Angeles.

SENATOR CEDILLO: Thank you.

CHAIRMAN ASHBURN: Senator Dutton.

SENATOR DUTTON: Just a couple of minor questions.

I want to also congratulate you, and I appreciate you stopping by my office. You and I had a pretty good conversation about different things.

One area that I would like maybe you to share with me at this time and the Committee is, what measures do we currently have in place to ensure that the money that we're delivering to the various agencies actually gets to the people that we're trying to help?

MR. THRONE: Well, I can do a blanket answer to that, regardless of whether it's the federal money or the state money.

When we -- when we fund the local agencies, there's all sorts of compliance requirements to these local agencies. And so, we'll divide up into compliance regulations and programmatic regulations.

I can just speak for CSD, and we do annual monitoring of these agencies. We get annually a community action program report. We get a planning report. We get data. We get audits once a year.

So, there's all sorts of safeguards in place, Senator, to make sure that these funds get to the people.

In addition to that, there's also limits to how much can be used in these funds for administrative cost overhead.

So, it isn't a freebie where, "Here's the money. Have a ball." There are limitations in the regulations to how much can be used for overhead.

Each program that we fund has quantifiable measures to it. So, we know exactly at the end of the year what is expected. And as I say, our field staff, both in our energy programs, in our Community Service Block Grant programs, will

monitor these programs annually. So, it's a fairly easy thing to do to make sure that the money is getting to the people.

I might add as an addendum that -- and pardon my prejudice -- but I'm hugely proud of our 100 member network. They're doing, for hardly any resources -- I mentioned to the Senator, we have $55 million coming into California out of 630 million. That's not a lot of money.

They -- this network has delivered services to almost half the low income in the State of California. I find that phenomenal.

So, I guess -- I hope I answered your question.

SENATOR DUTTON: Yes, you did.

I'll look forward to working with you in the future.

MR. THRONE: Thank you, sir.

CHAIRMAN ASHBURN: This is the time for witnesses in support of Mr. Throne's confirmation. Come forward, and I would say to the witnesses that if you give your name and your affiliation, and be extremely brief, we'd appreciate it.

MR. KOORTBOJIAN: Good afternoon. My name is George Koortbojian. I'm from Eureka, California.

I've prepared some brief remarks which, in the interest of time and per your request, sir, I will just turn in to you.

CHAIRMAN ASHBURN: You can submit them. We'd appreciate that.

MR. KOORTBOJIAN: Yes.

What I would highlight is, I was the President

and Chairman of the Board at Redwood Community Action Agency for 14 years, working very closely with Mr. Throne at the local level. I have seen what he can do for communities. I have seen what he can do for individuals. And this is outstanding work.

Lloyd has committed himself to public service. It's a great thing for the State of California to have an opportunity to work with him in this capacity, and I would strongly encourage your vote of support.

Thank you.

CHAIRMAN ASHBURN: Thank you for being here and for submitting your testimony in writing.

Other witnesses in support?

MS. CARSON: Good afternoon, Members of the Committee. I am Lois Carson, and I'm the Executive Director of the Community Action Partnership for Riverside County. We're a public model of a community action agency.

And to answer an earlier question about use of the funds, we leverage anywhere from $5 to $20 of every federal dollar that comes in, and we're a public CAP, and even we can leverage at least $5 every one that comes in.

I support Lloyd. He answered the call three times to the Peace Corps. When the President went around the country and saw the ugly face of poverty, Lloyd was there to answer the call, and he's there again today at this point in time to answer the call of the state. He could have stayed in Eureka and finished out his career there, but he knew that he was needed, and I think he brings just what the state needs.

His standard is excellence, and his creative

genius is legend to all of us around the state.

I do urge you to confirm him. He is the man for the job at this time.

Thank you.

CHAIRMAN ASHBURN: Thank you very much.

Others in support?

If those who are going to testify would kind of line up so that we can move through this, I'd appreciate it.

MR. CHAVEZ: Good afternoon, Members of the Committee. My name is Oscar Chavez. I'm the Acting Executive Director of the Community Action Parnership of Kern.

I'm here representing our Executive Director who is out on a short-term leave, Mr. Fred Drew, who is also the President of the California-Nevada Community Action Partnership. It is a member association made up of 56 community action agencies and other nonprofits.

We are here to support Mr. Throne. He is a leader. He is highly respected among the network. He's a visionary, and he has the ability to bring people together.

He's a compassionate person, one who believes in bringing together organizations, individuals, to fight the causes of poverty and to work together to develop winnable solutions.

And so, we are very proud of him and of the work that he has done, and of his experience. So, we think he will do a remarkable job, and we fully support him.

Thank you.

CHAIRMAN ASHBURN: Thanks for being here. Give

my best to Fred Drew.

MR. MEYRELES: Good afternoon, Members. My name is Raul Meyreles. I am the Executive Director of La Cooperativa Campesina de California, which as some of you know, is an association of community-based organizations, providing services to the immigrant populations and other rural poor from the Mexican to the Canadian border through our member agencies.

I've known Lloyd for, oh, 35 years or more. And I don't want to give you -- I don't want to repeat something that you all ready know. His qualifications are -- speak for themselves.

However, there is a quality that I've found in him and any other person that provides services to the less fortunate that is indispensible to do the job well. And I found that Lloyd cared. Caring seldom shows on resumes. Knowing him for as long as I have, believe me when I tell you he cares, and that's very important.

So, on behalf of my membership, we urge your support. Thank you.

CHAIRMAN ASHBURN: Thank you.

Anyone else in support of the nominee?

Those who are in opposition, come forward at your own peril.

[Laughter.]

CHAIRMAN ASHBURN: Do you have any closing comments, sir?

MR. THRONE: No, sir.

CHAIRMAN ASHBURN: Is there a motion?

SENATOR PADILLA: Move.

SENATOR DUTTON: So move.

CHAIRMAN ASHBURN: We have two motions before us. We'll take the motion from Senator Padilla, who was slightly ahead.

[Laughter.]

CHAIRMAN ASHBURN: Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

CHAIRMAN ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Four to Zero.

[Thereafter, CHAIRMAN PERATA voted Aye, making the final vote 5-0 for confirmation.]

MR. THRONE: Thank you very much.

CHAIRMAN ASHBURN: You've been approved and will move to the Floor. Thank you so much and congratulations.

MR. THRONE: Thank you.

CHAIRMAN ASHBURN: The next items are the confirmations of Charles Hoppin and Gary Wolff. You want to take them separate, okay.

So, Mr. Hoppin, since you are Item 2B, this is the confirmation to the State Water Resources Control Board.

Welcome. We'd welcome an opening comment from you.

MR. HOPPIN: Senator, thank you.

I can tell you, after eleven months of public service, I've looked forward to the this day for a long time.

I am Charlie Hoppin, the water quality -- I am currently appointed --

CHAIRMAN ASHBURN: Would you pull the microphone a little closer to you, sir?

MR. HOPPIN: I am currently appointed to the water quality seat, State Water Resources Control Board. I've served that job, it is a full-time position, for the last eleven months.

I will be very brief in my statement.

I have a bit of a different background, I believe, than any former appointee to the State Water Resources Control Board, in that for the past 40 years, I've been a farmer. And that was part of my motivation for applying for this position and being so determined to be appointed to it, because it seemed important to me that a member of the regulated community would provide important balance to this critical body in our state. I believe I've done that, and I would look forward to answering your questions.

CHAIRMAN ASHBURN: Thank you, sir.

Are there questions from the Committee? Senator Padilla.

SENATOR PADILLA: Thank you, Senator Ashburn.

Some of these questions are both on my behalf and

I know of particular concern to our Pro Tem, Senator Perata.

First of all, you were very candid in your responses to the Committee, and I very much appreciate that.

MR. HOPPIN: Thank you.

SENATOR PADILLA: And given your level of detail as well, it brings to bear some very significant questions.

Just maybe a month or two ago, Secretary Linda Adams was coming through here for confirmation. And it was a concern then, and it remains a concern now, whether or not the state is doing everything that the law requires to protect our water quality.

I want to offer a couple of quotes from your responses to this Committee's questionnaire, you say that as it relates to storm water run-off programs, that they are in disarray. Quote, "inspections are infrequent." Quote, "there is a significant backlog" in permits. Quote, it sets up "an unfair situation" because some must meet standards while others don't.

I want to ask you to expand on that, but before you do, just to let you know that in addition to the storm water run-off area, I do have questions in the water quality permits section in more detail, staffing needs, and groundwater as well.

But let's focus on the storm water run-off first.

MR. HOPPIN: Thank you for your questions, Senator.

I didn't feel that it was right to hide behind the shield of saying, "Well, we'd do better job if we had more

funding."

Coming from the private sector, I often dealt with less than an adequate budget, quite frankly, and I learned to make do with that. And so, I don't think it's right for anyone in this position to say, "Well, if you just give us more money, we'll do a better job," because it's really not as simple as that, as you well know. Your coffers ebb and flow with the economy on an annual basis.

Certainly many of the employees we have on staff aren't off of the street. They're very highly specialized people that are difficult to find, people that are willing to provide state service in a competent way that possibly could receive greater compensation in the private sector. So, even when we do have funding, we often have a hard time finding and training the right people.

In the water rights department, we're doing -- we're dealing with that exact situation right now. In the last budget cycle, we received funding for an additional six PYs. To date we have hired one. And it will probably take a year to a year-and-a-half to adequately train that person. Hopefully, the other five will be on board before too long. I know there have been resumes submitted.

And so, to tell you that things aren't perfect is the truth. And to tell you anything different would be telling you a bold-faced lie, quite frankly.

I believe we're making progress. And I believe we're dealing with the fact that we all, whether it's in your branch or in your purview, whether it's ours, we're all dealing

with less than adequate resources.

So, I believe we do the best we can. We do our best to be equitable and fair.

But to tell you it's perfect, I can't do that.

SENATOR PADILLA: And again, I appreciate your honesty and your candor.

In the section about water quality permits, known as waste discharge requirements, they are, quote, "seldom updated," "facilities are rarely inspected."

You do point out and recognize the staffing needs; 259 staff that are needed, but there's only 106 actual staff members there to fulfill these obligations.

What ideas, what thoughts, what conversations have you participated in to help meet the needs, and again, the legal requirements of what we need to do to protect water and the environment?

MR. HOPPIN: If we were held to the exact legal requirements of both the Federal Clean Water Act and Porter-Cologne, you'd come shut us down.

I think we're doing, as I said, an adequate job to protect the public trust. We work closely with the regional boards because many of these issues are -- have been relegated to the regions. Our Water Quality Coordinating Committee meetings help provide us with their specific lack, you know, their concerns as far as lack of personnel, and certainly they express that through their budget requests to us.

So often, to be honest with you, prioritization is done from other than through legislative mandates. It's

where the greatest need is, where the most egregious problem is, we gravitate to.

Just by the number of lack of inspections, I don't think indicates totally gross negligence, because I think we do concentrate from an historical basis where we've had problem areas.

But as I said before, there's lot to be desired.

SENATOR PADILLA: So I'll ask again, recognizing it's a dire situation, what else needs to be done?

And I do offer the question in the spirit of a partnership here. You have your role to play. The administration has its role to play. The Legislature has its role to play.

So I'm asking, what else needs to be done?

MR. HOPPIN: Certainly greater budget augmentations would help. I mean, it's pretty well recognized that we're about a half-a-million dollars a day short in this process.

And you know, one of the problem areas we have, you and I, quite frankly, discussed it in our meeting several days ago, was the Brownfield Cleanup Act particularly, or actions in particularly urban settings. We were successful in having your body and the State Assembly allocate funding for an additional 25 PYs, most of which will be going to Region Four, which is probably the most affected area that has been neglected in brownfields.

And so, we're trying to concentrate in our budget requests where we have the greatest need and demand, but it's

not a matter of trying to partially take care of every one of our descriptions, quite frankly. I mean, issues like that are helping, and your body has been helpful in recognizing those issues.

SENATOR PADILLA: Any specific thoughts you have or efforts under way in the area of improving groundwater, which is often used as a source of drinking water, to help protect?

MR. HOPPIN: We have the ongoing GAMA program, which is the Groundwater Ambient Monitoring. It's been an effective program. It's been recognized nationwide as being the most effective groundwater monitoring program in the United States.

We also have under our purview the Small Community Well program, which really has identified a lot of the nitrate issues in the state as far as contaminated groundwater. It's been very effective. We work in conjunction with the Department of Health Services that currently monitors all of the municipal wells in the State of California. We take care of the smaller ones through the Small Domestic Well program, and then through GAMA.

We'll be coming to you in the next couple of years. Proposition 50 provided $50 million for the GAMA program. And while there are sources of funding coming in, in addition to Prop. 50 now, we will need an additional budget augmentation probably in the next two years, not equal to, but less than the original augmentation from Prop. 50 to continue this program, because the GAMA program doesn't monitor every well in the state, but it's designed to monitor wells and

groundwater in strategic locations in the state to give us a data base to indicate where the problem areas are so we can proceed with more mediation.

SENATOR PADILLA: The next question has a little bit more to do with governance as opposed to policy. We have the State Board, and we have the regional boards.

I guess the basic question would be, in your opinion how are they working together? How well are they working together? What needs to be done to improve that?

In addition to that, any comments or observations of the consistency of regulation from region-to-region, and from region-to-state?

MR. HOPPIN: Senator, when I first came on the board, I would have probably told you that I thought we should do away with the regional boards.

And since I've been here for the last eleven months, it's clear to me that we need the regional input. Each region is different in many respects. It's important for the public from a transparency standpoint to be able to go into a board meeting and deal with somebody from their local community, and look at them while they're making their process. While they may only get three minutes before the microphone, which I don't think is enough, they may be very limited by ex-parte communication regulations and rules. But nevertheless, they have the ability to address someone in their area.

And as I've evolved my process, my concern is, if we completely stifle the regional board process, we're going to get ourselves into a situation where it's just strictly a

staff-driven process, and I don't think, you know, that is correct.

We are working currently on, for instance, on a State Recycle Water program. The Recycle Water program is something, to the best of my knowledge, that should fit in lock step with every region of the state. It shouldn't vary from one to another.

To address your point about consistency, we have six storm water permits in the state, five of which are issued by the State Board. Phase One permits are issued by the regional boards.

It wouldn't be possible to have a statewide permit for the Phase One for the smaller communities, which would certainly help add clarity and consistency in policy, but even at that, there are regional differences. If we dealt with the construction permit, for example, run-off in the North Coast would vary by 100 percent from run-off in the Santa Ana Region. So, we still need the regional input.

Where ever we can reach in from State Board, it's been very clear from messages from this body, from stakeholder groups, where ever we go, people want to have consistent policy between the regions of the State of California. Invariably, there will be issues where there is a need for regional specificity. And I don't think we can do away with that, but certainly we are moving forward.

We have a new Office of Enforcement. They are actively working with the regional boards to have enforcement criteria be in a very concise way. We have input through legal

staff, which we provide to the regional boards, that I think will help provide that consistency in enforcement. So, we're moving forward and, I think, probably in a way that, in the next year or two, will be very noticeable.

SENATOR PADILLA: Finally, I want to spend a few minutes on the topic of the Delta, and water quality in the Delta.

It seems that we're at one of those points again where nobody's happy. A lot of water users wanting more water. Environmentalists and other folks concerned about the ecology who want to further protect fish and wildlife. And it's gotten to a point where a judge has now ordered no more water until the state addresses the fish kills.

How do you reconcile the various interests here and still meet our obligations and our needs?

MR. HOPPIN: At the end of the day, our body is responsible for water quality in the State of California, and we have no place to hide on that subject. It is truly our responsibility.

The Delta, I'm always mindful of the fact that we refer to it as an environment, but we should really correctly refer to it as probably the most manipulated large environment in the United States, because it isn't a natural environment. It's an environment that we have managed, to one degree or another of success, for the last 150 years. And it's at a threshhold, as you well point out, where we're unable to convey the adequate amount of water through the Delta. We're unable to protect beneficial uses. We know them today in the Delta. We

have ongoing studies.

To give you a glimpse into my frustration, I'm sure you're familiar with the decline of the pelagic organisms, several species of smelt, and the striped bass, which, quite frankly, is considered a pelagic organism for reasons that escape me.

But we're also required, and rightly so, by many federal organizations to deal with anadramous fish. If you look at what's good for a pelagic organism, it may not be good for an anadramous fish. And so, we're conducting studies and trying to conduct parallel activities to protect both species, and sometimes they conflict with each other.

We have TMDLs for sediment in waters that go into the Delta. We're told by scientists from the University of California that the clarity in the Delta is increasing, which would seem that our TMDLs are providing a service to the community, and they're telling us that the Delta smelt don't feed as well in clear water as they did in the formerly more turbid water. And so, we kind of butt heads a little bit.

I'm very hopeful that the Delta Visioning Process that the Governor has undertaken will provide us with a direction. Whether that means augmenting a through-Delta facility, which we don't have today, or whether it means creating something, we'll call it an isolated facility of the Peripheral Canal. It may be a Delta correctional facility, I don't know.

But clearly, something's going to happen. And I believe when it happens, the beneficial issues that we recognize

today may change. Someone's not going to be happy about that.

Hopefully, we're able to do this in a way that we can continue using the Delta to convey water to two-thirds of the population of the State of California and still protect the environment which we have created and done a reasonably decent job of manipulating.

But we are definitely on a threshhold, and if you read my comments, that's my primary goal. If I can make just the slightest bit of difference, a tangible difference, so I can look Nettie Sabelhaus in the eye four years from now and say, "Nettie, I made a difference right here." That's one of my goals.

And I'm concerned with your opinion as well, but she's going to be more demanding probably.

[Laughter.]

SENATOR PADILLA: You may have been able to provide one of the most important rules around here.

[Laughter.]

SENATOR PADILLA: Thank you, Senator Ashburn.

CHAIRMAN ASHBURN: You can't argue that he understands his audience.

[Laughter.]

CHAIRMAN ASHBURN: Other questions? Senator Dutton.

SENATOR DUTTON: Once again, I want to congratulate you. I think you've done a pretty good job, and I certainly enjoyed our conversation that we had in my office.

I do have some questions regarding, just recently the voters of this state passed quite a few bonds for a lot of different types of projects.

What I'm concerned about and would like to get your input on is the draft regs that were just recently proposed concerning general construction permits.

MR. HOPPIN: Yes, sir.

SENATOR DUTTON: And the draft regs that were proposed.

I know there was a series of meetings and so forth that took place in the district, but it didn't seem to my recollection, or what I'm hearing, that really a lot of the different stakeholders were actually participating in those meetings. In other words, the people that actually have to construct.

So, why don't you give me some input about the basic process or the considerations that were given with regards to the stakeholders' involvement, or the people that we're going to rely on to do the construction?

MR. HOPPIN: Certainly, and I wasn't at that meeting, to be honest with you. I was at another meeting that I had no choice but to attend.

But I don't think it's unusual for one group or another at a meeting like that to dominate. If we get into a more sensitive environmental issue, depending on the geographic region we're in, the composition of the body might change.

So, I mean, when we do have a meeting like that, particularly with a draft, we try and get input from, you know,

everyone, whether it's the affected body, whether it's the construction industry at this time, and make our decision when we go forward, because that is a draft permit at this point. I suspect it will be modified before it comes to final version.

SENATOR DUTTON: You weren't at that meeting, but I will ask maybe in general --

MR. HOPPIN: There is someone here that was there, that was very involved in the construction of that, so I'm sure he'll answer in a more specific way than I. He might even be next.

[Laughter.]

SENATOR DUTTON: I'll be more than happy to ask him that question as well.

Is there any kind of an economic impact analysis that is taken into consideration at the time that regulations are proposed or thought of? Or give me, in your opinion as a board member, do you feel an economic analysis should be taken into consideration?

MR. HOPPIN: To tell you that there's a written check-off list that takes, you know, into consideration economic impacts would not be correct. To tell you that we all discuss that certainly wouldn't be correct.

That's part of the reason that I think my business background brings a perspective of balance to this board, because certainly while I think it's important to develop these regulations, our state isn't going to be very viable if we don't have businesses to hire people, and to construct things, and to move forward, however we're moving.

So certainly, I think we always need to give strong consideration to economic impact as we move forward. And often, we move forward in a very regulated way, a very mandated way. So, we don't always have a lot of latitude.

But I think it's important when we develop regulations, which you're talking about, that we provide an avenue for implementation, because so often what I saw prior to coming to this building was that we would have, as a regulated community, a regulation put in front of us.

Quite frankly, the promulgation of the implementation of that regulation is the most critical part of it, because if no one survives the implementation, we may not have done as much good as we thought we were going to do.

SENATOR DUTTON: One of the concerns that I have is, I don't have any trouble trying to achieve a better world. I think that's a worthy goal and so forth.

One of the concerns I have though is, sometimes I feel like we have a tendency to base decisions, or come up with programs, based on more theory than actual proven fact.

Is there anything that you do to kind of ascertain?

Like I said, there can be worthwhile goals, but I am concerned about us becoming the experiment, the guinea pig for new technology.

MR. HOPPIN: We are a guinea pig for new technology. I don't think any of us can deny it.

I just hope the hell that it's contagious and that other states and other countries follow our lead. Then the

expenses we go through on complying with those regulations are all relative.

If we're the only one doing it, it's going to be very tough to be competitive, certainly, in the future.

SENATOR DUTTON: That's certainly true if you're in a situation where you've got plenty of money and ample resources, I suppose.

Let's talk a little bit about the cooling situation with regards to our coastal areas. When considering those regulations on the once-through, I believe it's referred to as a once-through cooling?

MR. HOPPIN: Yes.

SENATOR DUTTON: Did the board conduct any kind of economic impact analysis on those regs?

MR. HOPPIN: Certainly we realized that the plants provide a significant amount of power to parts of our state at times.

It's my understanding that most of the once-through cooling plants are used intermittantly. Several of them are quite old and are just used during peak demand.

But quite frankly, we have no viable replacement for those facilities. So hopefully, as we go forward with regulations, we're not going to make it so impossible for those plants to operate that they're not economically viable.

One thing that's come out very clearly in discussion, and I have not received input as to whether it's practical or not, but many of the plants actually have water going through them all the time to prevent buildup. So, even

when they're not generating power, the effects that many are concerned about as far as incidental take of fish are amplified by the fact that they're used, even when they're not generating power.

And there was some discussion that we had, and answers that were going to be provided to us, as to whether there was a practical way of not circulating water through these facilities and still not have them be built up with marine-type life.

SENATOR DUTTON: Do you feel that you currently have the staff necessarily to deal with these types of issues?

MR. HOPPIN: I think on that type of an issue, certainly we do. I mean, we're not -- we're not dealing about -- dealing with 70,000 individual dischargers here. We're dealing with a very finite number of facilities.

And certainly it is controversial in some circles. When they turn them on, they take some fish. Fortunately, they're not anadramous fish or threatened fish, to my knowledge. So hopefully, we have a bit of latitude as we move forward.

SENATOR DUTTON: Okay, thank you.

CHAIRMAN ASHBURN: This is the portion of the meeting for those who would like to provide testimony.

Yes, sir.

MR. HOPPIN: Senator, I neglected something. I did not introduce my family to you.

CHAIRMAN ASHBURN: I know.

MR. HOPPIN: And I really kind of thought I was

going to follow your cue, and you were going to say, "Is your family here?"

CHAIRMAN ASHBURN: Is your family here?

[Laughter.]

MR. HOPPIN: By golly, I'm glad you asked. And I want to be -- I'll be very brief about this and not theatric about it.

But everyone that's here has contributed to why I'm here, and so if I could take just a second.

CHAIRMAN ASHBURN: Please.

MR. HOPPIN: We have my 90-year-old mother.

I will tell you all that if your checkbooks at home are balanced as well as her checkbook is, you're well served.

My mother's been an inspiration to me. We refer to her as the Director. My dad, when he was military, was a captain, and my mother will always be the Director, because no matter what we're dealing with, whether it's what you're dealing with, or what I'm dealing with, she never is short of an opinion.

I have my wife Cathy. You'll see on my bio that I formerly, before coming here, farmed 3,000 acres. We built a business from scratch. My wife has taught school for 37 years; this is her last year. And without that, we would not have built a business. So, my wife Cathy.

Before I applied for the water board, I talked to my son, who's 26, and I said, "I'm probably not going to be successful at this endeavor. There's a lot of people that want

this job, and there's a lot of people that don't like me. But if I'm successful, you're going to need to take over the farm because I'm going to take this full-time job."

My son, Casey.

I hate to admit it, but things are going more smoothly without me than they were when I was there. We have youth.

[Laughter.]

MR. HOPPIN: My daughter, Kelly, flew up from Cal Poly to be here today, 21 years old. She's going to graduate in the fall year quarter next year, four years and a quarter, which in this day and age is good. She's going to run the combine for me this summer, not because she wants to, but because I need her help.

In addition to that, she is going to be doing an internship in a very fine law firm in Sacramento. Someday, she will be my legal counsel.

Thank you for that opportunity, Senator. It's important. I got out of step there, and God help me if I had not done that.

[Laughter.]

CHAIRMAN ASHBURN: And you got through it very well.

Mom, how are we doing?

[Laughter.]

CHAIRMAN ASHBURN: We're okay, good.

We will hope to continue that as we call witnesses in support. Anyone like to give testimony in support

of the nominee?

MR. FALASCO: Mr. Chair and Committee Members, Mike Falasco, Wine Institute, here in support of Charlie Hoppin.

Why? The wine industry has our -- and very proud and dedicated to our code of sustainable wine growing practices. We're committed voluntarily to improving the environment and our economic situation.

Charlie Hoppin has lived our code. As a rice farmer, they have done a great deal for water quality and air quality in the State of California. That should be acknowledged in a very competitive world marketplace.

We think that Mr. Hoppin should be complimented for volunteering to be a citizen public servant. We also think that his family should be complimented for the sacrifices that they're making.

The State of the California will be -- is very well served by Charlie Hoppin. He is balanced. He's solution specific oriented and consensus driven. Those are valuable, important qualities for the very tough job he has everyday.

With that, I'd like to conclude my remarks. If there's any questions, I'd be glad to entertain them.

CHAIRMAN ASHBURN: Thank you, Mr. Falasco.

Other witnesses in support?

Witnesses in opposition?

Do you have any concluding remarks?

MR. HOPPIN: Senator, I think considering the opposition to my appointment, and the fact that there is no one

here in opposition today, I will take that as a compliment.

CHAIRMAN ASHBURN: You keep referring to opposition, and it doesn't seem to be here.

Is there a motion?

SENATOR PADILLA: Motion.

CHAIRMAN ASHBURN: Motion from Senator Padilla.

Call the roll, please.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

CHAIRMAN ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Four to Zero.

[Thereafter, CHAIRMAN PERATA voted Aye, making the final vote 5-0 for confirmation.]

MR. HOPPIN: Thank you all very much. I had hoped for a 5-0 vote, but I guess it was impossible today.

CHAIRMAN ASHBURN: That's as much as you're going to get.

Actually, Mr. Hoppin, the Pro Tem will have the opportunity to add onto the roll. That's one of the prerogatives of the leader. So, I suspect that he will want to add himself to the roll here.

How he'll vote, we don't know.

Okay, now let's ask for Gary Wolff, Member of the State Water Resources Control Board.

Dr. Wolff, welcome.

DR. WOLFF: Thank you.

CHAIRMAN ASHBURN: Make yourself comfortable, and we would be pleased to hear from you.

DR. WOLFF: Good afternoon.

I was going to thank Senator Perata for scheduling the hearing. Unfortunately, he's not here.

SENATOR PADILLA: You can still thank him.

DR. WOLFF: I can still thank him, and I am thankful because I was scheduled and unscheduled for this confirmation in August. And since that occurred, I've discovered just how many nominees never get scheduled. So, when I say I'm thankful to be here, I'm really thankful to be here.

[Laughter.]

DR. WOLFF: Thank you also, to all Members of the Committee, for considering me for this position, and in some cases for making time in your busy schedules to meet with me individually.

I'll be happy to discuss issues in a few minutes, but I'd first also like to introduce my wife and thank her, Ruth Hartman.

And I thought it'd be useful to provide a short self-introduction before we discuss the issues.

There are four aspects of my background that I'd like to emphasize.

First, I have a long history with the water board

system. I worked for two years as junior engineer in the San Francisco Bay Region in the mid-1980s. In 2005, I was appointed by Governor Schwarzenegger to the San Francisco Bay Regional Board, and I was subsequently confirmed by the Senate without opposition. So, although I've been on the State Board for ten months at this time, my history with the board system goes back 23 years.

Second, I'm a certified smart guy. I have a master's degree -- just proven by calling myself a smart guy -- I have a master's degree from Stanford University in Civil and Environmental Engineering, and I'm a licensed civil engineer. I also have a doctoral degree from University of California at Berkeley in resources and public economics.

After getting my Ph.D., I spent a year at Stanford as a post-doctoral fellow, and a second year as a visiting scholar. I subsequently worked for a year as a visiting professor at the Monterey Institute of International Studies. I've been published in peer review journals and have been the lead author on numerous technical reports.

Third, despite this ivory tower background, I'm a very practical person. I've worked in the construction trades, and I've busted more than few knuckles trying to build, or operate, or maintain something or other. I held a specialty contractors license in California before I got my civil engineering license.

Whenever I consider a permit or a plan, I ask, "Who is going to do what, and where, and when to improve water quality if I endorse this document?" All the paperwork in the

world cannot achieve clean water. Well trained, well equipped, properly motivated and managed people who build or operate a facility, or who engage in so-called management practices are the key to clean water.

That's why, since joining the State Board, I have been on five full-day farm tours, three tours of storm water treatment facilities, three tours of recycled water facilities, two tours of water supply facilities, and other miscellaneous site visits. This summer if confirmed, I'll go on two timber tours, which are expected to take three days in total, in order to understand what is involved physically when timber is taken from a forest and water quality concerns exist.

Finally, I'm what the Governor calls post-partisan, and I have been for a long time. I judge possible solutions to our problems not by who is proposing them, but by what is being proposed, and by the relevant facts.

As the Governor says, there is no such thing as Democratic clean water or Republican clean water; there is only clean water. My job is to figure out how we can ensure clean water for all people of the state.

We recently began a strategic planning process at the State Board, and as part of that process we held a stakeholder summit a few weeks ago. I was there from beginning to end of the summit, and I was surprised and pleased to hear that most of the over 100 participants felt that the water board system has become too political in recent years and should explicitly try to become less political.

I am a sound science, fact-oriented decision

maker who spends a lot of time chewing on details. Apparently, that is what the majority of stakeholders want at this time.

In summary, I believe that my technical skills, my practical focus, and my nonpolitical facts-first approach to this job justify a vote to confirm. I hope that you will agree.

CHAIRMAN ASHBURN: Thank you very much, sir.

It's hard to believe that you're an engineer with your nice personality. Obviously, it's the reason you've done so well.

Are there questions? Senator Dutton.

SENATOR DUTTON: Thank you.

Thank you for your service, and thank you for being here today.

That meeting that you were referring to, is that the one where the draft regulations were developed? Or, was that part of the meeting process, where the draft regulations were developed for the general construction permit?

DR. WOLFF: I'm not sure which meeting -- oh, no. It was the stakeholder meeting. It was a stakeholder summit we held here in Sacramento. It was not for a permit. It was a strategic planning summit.

SENATOR DUTTON: That wasn't the same meeting for developing --

DR. WOLFF: The construction permit, no.

SENATOR DUTTON: It wasn't the same meeting?

DR. WOLFF: No. We held two hearings last -- two meetings last week on construction permit. One in Rancho Cucamonga, and the other one up here on Friday in the Secretary

of State building. And I was at both of those as well.

SENATOR DUTTON: Well, the one in Rancho Cucamonga, apparently there were people that felt like the actual people that are involved in having to build, contractors, didn't actually get an opportunity to provide much input.

I wasn't there. I'm assuming you were.

DR. WOLFF: I was, and I ran the meeting. And the Building Industry Association of Southern California spoke first, and they spoke for about 30 minutes at their request. We gave them all the time they wanted.

SENATOR DUTTON: Okay. I must be getting some misinformation.

You indicated that you believe that it should be based on fact as opposed to -- well, you didn't say this, but I'm assuming what you meant was, rather than a theory, it should be based on scientific fact?

DR. WOLFF: Yes.

SENATOR DUTTON: Is that what you're indicating?

DR. WOLFF: Yes.

SENATOR DUTTON: I'm pleased to hear that, because I think sometimes we work on theories instead of fact, but I thank you for that. I appreciate that.

So, you feel like you've already had your stakeholder meeting with regards to the construction permit process?

DR. WOLFF: No, not necessarily. I mean, the staff created a straw-dog permit. It was put out for review. We held two workshops on it.

The next step is to revise that, and either take it to a board level workshop, where all the board members are present, or possibly have another workshop prior to all of the board members being present. That's something that needs to be discussed interally.

SENATOR DUTTON: You said that the builders actually did participate?

DR. WOLFF: Absolutely. They were there on Tuesday and again on Friday.

SENATOR DUTTON: And the water districts participated as well?

DR. WOLFF: The water districts. Well, there weren't that many water districts there because they're not that concerned about the construction permit, but there were some water district people there.

The full range of stakeholders were there on the two days, yes.

Now, possibly what you heard is, on Friday I had to leave at 3:00 o'clock, in fact to meet with the staff of this Committee. And so, I left at 3:00 o'clock. The workshop was scheduled to go to 3:30. Maybe that's what people were complaining about. I don't know.

SENATOR DUTTON: No, it was just some information that was given to me. All right.

Let's talk a little bit about the once-through cooling. Give me your thoughts on that, and the kind of impacts that we need to be concerned about?

DR. WOLFF: Sure.

The federal government had regulations governing once-through cooling at power plants on coasts, and on water bodies like the Great Lakes, for existing power plants. And those -- those regulations have been remanded now by the court back to EPA for revision.

What we were doing is, we were looking at adopting those federal regulations in California, which is required if they're finalized as federal regulations, and then perhaps going somewhat beyond that. And so, the staff put out -- before my tenure on the board, they put out a draft proposal for a policy in the area of once-through cooling.

They received feedback on that. They have begun to prepare the CEQA documents for the policy. Those CEQA documents do include an economic analysis, as you mentioned or you were asking about earlier. They also include or will include a study that's been funded by the Energy Commission to look at the physical limitations on each of these power plants; what can be done at the plants.

There are 21 coastal power plants in California that will be subject to the policy.

Given that the federal rules have been remanded, we're going to have to make an internal decision about how to proceed. We haven't had a conversation about this yet, but we can either continue with a policy of our own, because we have authority to do that, or we could delay our policy and, in some way, coordinate the actions of the regions when they issue permits to those 21 plants, because they have the authority to do as much as we could do through a policy, because the policy

only gets implemented through the permits.

So, if we could find some way to coordinate the permits, we wouldn't have to have a policy. So, we have to kind of figure that out, how we want to proceed now that the federal rules have been remanded. And we're told that it's going to take three years before Federal EPA comes up with anything further.

So, that's sort of the basic process of it.

With respect to the decision itself, I have heard people testify that these power plants are very damaging biologically. I've heard people testify the exact opposite.

When the time draws near, I've got to gather all that information together and assess it. I already told the staff that I need a much clearer sense of what the relevant biology is, because for example, I'll give you an example of the detail.

Those who say there's a lot of harm come in and say, "You're killing billions of larvae; millions or billions of larvae." That's true. It's been documented.

But the larvae are very small, so those who say there's no harm say, "Well, you know, it was only, you know, 50 pounds, or a ton in a year."

Well, the question is, how many of that larvae would grow up to full size fish? And of course, there's competition among larvae, so not all of them grow to full size fish.

So, it's not at all clear what the impact is of the once-through cooling. It could be very, very significant,

and it could be less significant.

EPA has deemed that it is significant enough to do something, so I don't think the science will show us to do nothing. I think we're going to probably end up doing at least as much as EPA was planning to do, because I thnk the science is there for that.

Whether we go beyond what EPA would have done or not, I don't know. It depends on the science.

SENATOR DUTTON: Do you feel that we have the proper staff?

DR. WOLFF: Yes. I think our Ocean Unit is adequately staffed and funded, yes.

SENATOR DUTTON: Okay, thank you.

CHAIRMAN ASHBURN: Senator Padilla.

SENATOR PADILLA: Thank you.

And again, some of these are my questions, in full disclosure, and some of these I know are particular concerns for Pro Tem Perata.

You mentioned the issue of staffing.

DR. WOLFF: Yes.

SENATOR PADILLA: And I'll ask the general comprehensive question on staffing and resources with the previous appointee, who highlighted the lack of sufficient staff.

So, given both the staffing situation and the funding situation, how do you go about establishing priorities to the staff and resources that you do have, and what are those priorities?

DR. WOLFF: If I could get to the priority question through something else first, it would be helpful. I did prepare some supplemental answers.

SENATOR PADILLA: So, let's understand how engineering minds work.

DR. WOLFF: Yeah, this is my -- the engineering side is coming out here. I want to methodically work through it, with your permission.

I first want to be clear about what my beliefs are with respect to whether we can fulfill our mission at our current funding level.

I believe we are not fulfilling our mission adequately at present. However, I do not assume that under-funding is the sole cause of our condition. Our capacity to fulfill our mission depends on funding, but it also depends on our management skills and the structural constraints that we operate under.

By structural constraints, I mean the legal structure, including such things as the lack of authority over regional staff, except through the nuclear option of budget reallocations internal to the system.

I'm pleased that there is attention to these issues at the highest level of California government. I think some structural changes would significantly help us to fulfill our mission more adequately.

I also think that we have been and will continue to improve our use of existing resources. I'll be working with our partially new executive team over the next six months to try

to figure out how much better we can do with the resources we all ready have.

And I can also walk you through what the efficiency improvements have been since 2001, at least what some of them have been, when the last needs assessment was done, and how moving forward we intend to become more efficient, if you're interested in that.

Returning to the issue of our budget, I want to point out that within the limits of my knowledge, I was and am willing to say that we need more resources when I know that we do. I unambiguously said we need more money for our surface water monitoring program, and that we need more water rights staff.

However, I can't say that we need 259 --

COURT REPORTER: Please slow down just a bit.

[Laughter.]

DR. WOLFF: As much as you'd like. I was trying to be respectful to Senators' time.

CHAIRMAN ASHBURN: We have competing interests here.

DR. WOLFF: My mistake.

[Laughter.]

CHAIRMAN ASHBURN: We have the speed of the ear, and then we have the speed of the fingers.

DR. WOLFF: However, I can't say that we need 259 person-years of core regulatory staff, because that number is based on a six-year-old needs assessment.

I was pleased to hear yesterday that a revised

needs assessment is now being scheduled for completion in January of 2009. And in particular, I would be interested in that, the work of that revised needs assessment, to get some people involved who are experts in regulatory management from around the country. There is a National Association of Pollution Control Officials, and we can maybe get an expert panel together of some of them to help us do a needs assessment that will be credible, and that everyone will accept in the end so that this issue of resources is not such a political hot potato, but is based on factual analysis.

I also just wanted to comment that our direct spending on clean water is the tip of of the iceberg. Our budget is less than a billion dollars. Spending on clean water statewide is at least $10 billion, maybe more. So, it's important to keep that in context.

I've made very clear in my statement of long-terms goals that I'm committed to finding ways to promote investment in water resources protection and restoration, and that may involve mechanisms such as my initiative with respect to dairy farms, and energy recovery at dairies that are outside of our state budget, and yet bring more resources into water quality protection, in particular protection of groundwater against nitrates and salts.

So, that's the general question about resources. Now, with respect to efficiency, I can talk on about that, and what I discovered with respect to the details of our system, and give you my ideas about how we could move forward.

Or, I can move directly to your question about

priorities, if you prefer.

SENATOR PADILLA: Please.

DR. WOLFF: Priorities.

I'm not satisfied that the way we set our priorities now is correct. My lack of satisfaction isn't so much with the priorities that are set, but with the process that's followed.

And the process essentially is that someone decides that something is important enough to do, and they do it. And that someone may be an executive officer in a region, or a division chief, or an individual board member. We do not have a comprehensive set of top-down priorities endorsed by the board.

We did have such a thing five or six years ago. There was a strategic plan, and the strategic plan did set some priorities, and I like that plan. But that plan is now somewhat outdated. The details in it are outdated. We need to update it. So, we're entering into a new strategic plan, and we're a bit behind. I don't think we've established those priorities yet, and it's too bad we couldn't have done it a year ago, but we'll get there through the strategic process.

So, I'm not satisfied with the priority setting now, and I don't think we're fulfilling our mission overall.

I think setting priorities is essential to getting as close to fulfilling the mission as possible, and we'll get to that priority setting through the strategic plan.

I don't know if that's an adequate answer or not, but it's my best at this point in time.

SENATOR PADILLA: That's great. And part and parcel with the priority setting, and being as effective and as efficient with our resources as possible, comes accountability.

Any comments on current levels of accountability, and how to improve accountability between the State Board, to the regional boards, and collaboration in between?

DR. WOLFF: Yes, yes. I have said a number of times, and it's in the written testimony, that I think a legally created reporting relationship for administrative functions that delineate a list of administrative functions should exist between the regional board executive officers and the Executive Director of the State Board.

We don't have accountability on basic functions, like inputting data to our data base system so that we can delivery an enforcement report that's up to date to the Legislature by the mandated deadline. We're structurally impaired in that way. If all the regional board executive officers cooperate, we're fine. If one of them says, "I was on vacation; I was too busy," whatever, then, you know, then we look bad. We don't have a complete report, and we have no way to criticize that person for that.

So, I think the structural relationship on those sorts of administrative duties would help.

I also think with respect to the board level relationship -- the structural relationship I'm talking about is at the staff level -- I think with respect to the board level relationship, we on the State Board need to be much clearer and simpler about what the statewide interests are, and what we

think should be done about them. Short policies, clear policies, this is what you must do; this is what you cannot do, but to limit it.

And beyond that, it's up to the regions to determine details that are region-specific. But we need to be much clearer.

In our nonpoint source policy, for example, it is over 100 pages long. And it's very difficult to determine whether actions to protect nonpoints against nonpoint source pollution are actually in accordance with our policy or not. Almost anything is in accordance with our policy because it's a long policy. We need to be much shorter and clearer. And in doing that, I think that we will help people on the regional boards. Having been there, I know it's difficult. You don't know what the state policy requires.

We just got a letter, in fact, asking us to take up an appeal against the Central Coast Board. The letter is signed by the Chair of the Central Coast Board. He wants us to take up the appeal because he says it's not clear how they're supposed to implement the nonpoint source policy. And they're being criticized by stakeholders at meeting, after meeting, after meeting. And yet, they hear other regions implementing the nonpoint source policy in a way that would also be criticized if those stakeholders went there, but they don't.

So, he's saying, you know, we need the State Board to step in and tell us how the policy is to be implemented. Give us clarity.

So, I think if we take on that role, there will

be a positive response of the regions, and especially if we couple taking on that stronger role with being very differential to the regions when it's not a statewide interest. I think we can develop a better relationship between state and region.

SENATOR PADILLA: Thank you, and as with the previous appointee, for your honesty and your candor.

Last question is this. I think it's safe to say that last year's infrastructure bond package would not have happened without the leadership of our Pro Tem, Senator Perata.

Proposition 84 is no different, so there's significant funding going out on the streets for water quality improvement projects, and infrastructure improvement projects in general.

How do we continue to protect water quality, improve upon water quality, protect the environment in general while we're constructing left and right?

DR. WOLFF: How do we protect the environment from the possible negative impacts of construction?

SENATOR PADILLA: And take the levees as probably the basic example of what we need to have our eye on.

DR. WOLFF: Well, we have a large body of environmental law that provides those protections. So, unless something in the bonds measures that I'm not aware of waives those laws, I'll simply rely on those laws. I'm not aware of any --

SENATOR PADILLA: Let me rephrase the question.

There are laws in place that dictate environmental protections.

DR. WOLFF: Yes.

SENATOR PADILLA: We also know we need to improve upon, and let me just narrow it down to water infrastructure specifically, our levee system even more specifically.

Whether it's a modification to the existing infrastructure that's there, or additions to it, what do we need to be mindful of during the construction process so as not to compromise legal compliance, and not compromise environmental protections?

DR. WOLFF: It's an excellent question. It's a very tough question, because I have never worked on a levee project. I have not designed a levee project. I have not issued a permit for a levee project.

The place where the water board system, I think, has the greatest authority is through our 401 certification under the Clean Water Act, Section 401 of the Clean Water Act. We have to issue certifications or not, deny a certification, for projects that affect waters of the United States or waters of the state. It's waters of the United States when it's a 401 cert.

So, we need to be darned careful to manage that certification process appropriately.

SENATOR PADILLA: It seemed like a common sense question to me when I was asked the question. So, I figured a bright guy like you ought to be able to tackle it.

If nothing else, it's on your radar and that of the board now.

I look forward to working with you --

DR. WOLFF: Yes.

SENATOR PADILLA: -- as time goes forward.

DR. WOLFF: I'll be glad to follow-up on that.

SENATOR PADILLA: Thank you.

CHAIRMAN ASHBURN: Thank you.

Now I ask those who would wish to provide testimony in support to please come forward. Give us your name and affiliation, and your comments very briefly.

MR. SOARES: Mr. Chairman and Members, George Soares on behalf of the Alliance of Western Milk Producers.

The dairy men and women who comprise the alliance operate facilities that produce approximately 60 percent of all the milk produced in California everyday.

The membership of the alliance has been very impressed with Dr. Wolff and his interest in the industry. We can't quite recall the last time a member of the board showed up at one of our dairies with us to find out more about the issues associated with the dairy industry. Spent an entire day doing that, just making himself available to do more of that.

And certainly there are any number of issues associated with dairy at this board, and we'll all have to work through in the years ahead.

We find him to be very inquisitive, very challenging, but we also find him to be very practical in terms of looking at the issues from a real life perspective, and then trying to work with us to find solutions that can work for everybody.

So, for those reasons and more we support his

appointment.

CHAIRMAN ASHBURN: Thank you very much.

Next.

MR. HAWKS: Thank you, Members of the Committee. My name is Jack Hawks, and I'm the Executive Director of the California Water Association.

My group represents the interests of the approximately 140 regulated public utilities in the state.

And I will certainly reiterate the remarks made by the previous speaker. Frankly, Gary, Dr. Wolff, has I believe the ideal combination of environmental, technical, scientific, economic, and practical management experience for this position.

We strongly support his confirmation. Thank you.

CHAIRMAN ASHBURN: Thank you, sir.

Next.

MS. HAREN: Hi, good afternoon. My name is Angela Haren. I'm with California Coastkeeper Alliance, and we represent 13 water keeper organizations throughout California.

I'll just keep my comments very brief and say that we strongly support Dr. Gary Wolff's confirmation.

Thank you.

CHAIRMAN ASHBURN: Thank you.

MR. REES: Senators, Brian Rees on behalf of the Santa Ana Watershed Project Authority, who is actually in strong support of both confirmations. I apologize.

Also on behalf of Mr. Wolff's confirmation, I'm representing today the California Dairy Campaign as well as the

California Farmers Union.

Thank you.

CHAIRMAN ASHBURN: Thank you.

MS. O'DONNELL: My name is Owen O'Donnell. I'm from San Francisco.

I am here in official capacity as the Chair of Baykeeper, which is a 501(c)(3) committed to improving water quality in the San Francisco Bay and all of its tributaries, including the Delta.

I've known Gary for seven years. He and I joined Baykeeper Board together seven years ago. I found that he has extraordinary knowledge and experience about water and water quality issues. He's extremely thoughtful and uses a very reasonable approach to water issues. And he recognizes all sides of the issues and considers all points of view.

We believe that he would be an excellent asset on the State Water Board, and we wholeheartedly support his nomination.

CHAIRMAN ASHBURN: Thank you, sir. We appreciate your testimony.

MR. MICHALCZYK: Good afternoon, Senator Ashburn and Members of the Committee.

My name is Bert Michalczyk. I'm the General Manager of the Dublin San Ramon Services District. We're a water and waste water utility in the East Bay.

And I have known and worked with Gary in various capacities for over 20 years now. In that time, I've come to know and respect and trust his judgment implicitly. He has a

great command of the issues, a good sense of what's important from a policy perspective. His experience speaks for himself. Very strong work ethic, very strong ethical standards as well.

Since he was appointed by the Governor, I've had an opportunity to talk with him on numerous occasions about water issues. And what I heard in those conversations only confirms my faith in his abilities.

The people of California will be very well served by having Gary in this position, and I wholeheartedly urge your favorable consideration.

CHAIRMAN ASHBURN: Thank you very much.

MS. MACLAY: Good afternoon, Senator Ashburn and Members of the committee.

My name Is Julia Maclay on behalf of the Santa Clara Valley Water District. We are the primary water resource management district for Santa Clara County.

I'll just be brief and say that our agency strongly supports the appointment of Mr. Wolff to the State Water Resources Control Board. And we respectfully urge you to do so as well.

Thank you.

CHAIRMAN ASHBURN: Thank you very much.

Other witnesses in support of the nominee?

Anyone in opposition?

Do you have any concluding remarks, sir?

DR. WOLFF: I only apologize to Senator Padilla, who's left the room, if I spoke at too great a length in response to his question.

SENATOR PADILLA [FROM BACK OF HEARING ROOM]: I'm here.

CHAIRMAN ASHBURN: I had the feeling it was engineer to engineer.

[Laughter.]

CHAIRMAN ASHBURN: Is there a motion?

SENATOR CEDILLO: So move.

CHAIRMAN ASHBURN: Senator Cedillo makes the motion. Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

CHAIRMAN ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Four to Zero.

[Thereafter, CHAIRMAN PERATA voted Aye, making the final vote 5-0 for confirmation.]

CHAIRMAN ASHBURN: Congratulations, sir

DR. WOLFF: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:25 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of April, 2007.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT
700 North 10th Street, Room 258
Sacramento, CA 95814-0338
(916) 341-4200 - (916) 341-4203 (FAX)
(916) 327-6318 (TDD)

April 16, 2007

The Honorable Don Perata, Chair
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
State Capitol, Room 420
Sacramento, CA 95814

RE: CONFIRMATION HEARING OF APRIL 25, 2007

Dear Senator Perata:

Thank you for your consideration of my appointment to serve as Director of the California Department of Community Services and Development and for the opportunity to provide responses to the questions from your letter dated March 22, 2007. My responses are attached. I welcome further discussion with the Senate Rules Committee during the hearing to consider my nomination to serve in this capacity.

I hope to have the opportunity to work with the Legislature to improve the Department's coordination and collaboration with other state and community partners in providing services to California's low-income population. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

I welcome further discussion with you and your colleagues on important issues facing the Department. Please contact me at (916) 341-4230 if I can provide additional information in advance of the April 25th hearing.

Sincerely,

Lloyd Throne
Director

Attachment

What do you hope to accomplish during your tenure as director of CSD? Please be specific. How will you measure your successes in meeting these goals?

I accepted the job as Director of the California Department of Community Services and Development (CSD) to make a difference in the lives of low-income Californians and feel that I bring a breadth of experience at the local, state, and federal level in delivering innovative, cost-effective and well-managed programs to California's low income population. Using my years of experience in the community network, I believe that I can leverage that knowledge and provide statewide leadership and direction to CSD and its network of providers. As Executive Director of the Redwood Community Action Agency, I stressed partnerships with the private, public, and non-profit sector. The result was a multi-million dollar agency that operated 165 successful programs to help low-income clients and improve the environment. As CSD Director, my goals are linked to the management of programs that are almost exclusively financed with federal funding from the Community Service Block Grants (CSBG), the Low-Income Home Energy Assistance Program (LIHEAP), and the Weatherization Assistance Program (WAP). To that end, I've identified the following goals:

- **Further improve the effectiveness of the network agencies**

The strength and effectiveness of CSD is directly linked to the vibrancy and effectiveness of our local community agencies. In order to help local agencies assess their performance, CSD initiated the pilot implementation of a CSBG agency self-assessment tool, based on a nationally-recognized assessment model. Ten CSBG agencies piloted the assessment tool beginning early this year and the results have been so encouraging, CSD has asked for the early implementation of the remaining agencies. The assessment tool derived from a Blue Ribbon Task Force of selected high-performance network agency leaders who collaborated on core non-profit competencies to be assessed, including board governance, leadership, staff development, communication, technology, financial management and stability, resource development, linkages, and program delivery. The assessment captures successes, challenges, best practices, and applicable actions. Besides institutionalizing anecdotal information, the assessment tool has the flexibility to identify both local and universal issues. The expected outcome is a database for CSD to develop a formal technical assistance and training program for the network agencies, either by their request or at CSD's direction. CSD also expects to create a skill bank, identify best practices, establish peer-to-peer advising, and develop a prototype for an academy. In addition to the statewide self-assessment tool, CSD has initiated a partnership with network agencies and associate agencies such as the California-Nevada Community Action Partnership (NCAP) to develop the California model for Strength Based Needs Assessment (SBNA) to identify and provide agency training and technical assistance. This training is agency-specific and can be tailored to local needs.

My goal with the LIHEAP program is to develop a state-of-the-art performance outcome model for energy weatherization that will automatically quantify energy savings based on the totality of measures installed in the home with variable climate conditions. The infrastructure for the model is our Weatherization Automation Project scheduled for implementation in 2008, which will provide site specific data from each of the network agencies linking weatherization measures with measurable outcomes. The model will derive energy savings outcomes that can measure the cost-effectiveness of agency operations.

- **Improve the skills, knowledge, and abilities of CSD staff**

In an effort to promote understanding and skill-building between network agency staff and CSD staff, I have instituted "Trading Places," where CSD staff spent several days shadowing community services agency program staff. CSD staff have gained a greater understanding of the challenges of operating low-income service programs, and local and private service providers have expressed support and appreciation for the exchange. This program has received nationwide attention as an innovative way of information sharing.

CSD partners with over 100 agency network providers and we share the goal of self-sufficiency for our clients. I plan to institute a quarterly agency provider presentation at the CSD headquarters, so that all CSD staff can hear first-hand from grantee staff about issues and programs in the communities we serve. I strongly believe in cross-training, especially because CSD not only funds, but also monitors a wide diversity of programs and populations.

Staff development includes the recent completion of a 30-day course on "Non Profit Governance and Financial Management" conducted by the University of California, Davis on site in one- and two-day seminars over a period of several months for all program staff. In addition to significant unit training, we are developing compliance standards and updating policies and procedures to ensure consistency and accuracy in the community program monitoring process.

My personal experience over a 40-year career includes mentoring staff and developing leadership skills. To this end, I am initiating informal meetings with managers and other staff to provide mentoring support and I am requiring attendance by all CSD managers at the Health and Human Services Supervisor's Academy.

- **Expand capacity and resources to meet low-income needs**

Since my appointment, I have met with many of my fellow State Directors, including those from Social Services, Mental Health, Aging, Alcohol & Drug, Health Services, Child Support, Rehabilitation, Corrections, Office of Emergency Services, as well as the Employment Training Panel and Emergency Medical Services Authority to identify issues of mutual interest, program parallels, and to

develop innovative partnerships and collaborations. I am also seeking ways to prevent duplication of services in the interest of efficient government. For example, the California Department of Aging provided information on their website and distributed CSD brochures and hot weather tips to their Areas on Aging throughout the state last summer, prior to the extreme heat. A simple, no-cost collaboration leveraged our outreach efforts to low-income seniors on ways to mitigate the effects of hot weather safely and efficiently and information on resources for assistance.

Current CSD collaborations include negotiations with the Department of Corrections and Rehabilitation, Division of Juvenile Parole Operations, to include CSBG agencies in their $9.5 million Juvenile Justice Community Re-Entry Challenge (JJCRC) Grant Program. The Program grants are to support the development of local infrastructure to provide comprehensive re-entry services for juvenile parolees and are open to county and non-profit agencies. These grants would be an excellent fit for many of our grantees, especially those located close to juvenile detention facilities.

CSD has also recently applied for a federal prisoner re-entry grant and is partnering with the California Department of Social Services to identify alternative community-based proposals, including a pre- and post-emancipation case management services program to address the needs of aged-out foster youth. Examples in the communities include Second Change (San Diego); California Human Development Corporation (Farm Worker District One); and the Alameda Community Action Program. Collaborations such as these leverage both funding and services for all partners.

My extensive experience in planning, developing, and operating comprehensive facilities for the homeless with the Multiple Assistance Center in Eureka has also provided me with an opportunity to serve on the State's Task Force on Homelessness, which is charged with drafting the 10-year Chronic Homeless Action Plan, and the Mass Care and Shelter Committee, a disaster assistance program for the homeless.

The recent extremes in weather and rise in utility costs have prompted CSD to develop new and better ways to motivate the low-income population to weatherize and initiate simple, low- or no-cost ways to conserve energy. While CSD promotes health and safety as priorities, the primary LIHEAP message is conservation of energy, which is consistent with the California's environmental goals. Energy conservation and efficiency improvements such as weatherization and home repair are readily available and there is great potential for energy saving. Energy conservation and efficiency improvements also function effectively in reducing carbon emissions. CSD is researching the feasibility of using the reduction of carbon emissions from weatherization in a carbon credit program. Carbon credits are measured in units of certified emission reductions with each certified unit equivalent to one ton of carbon dioxide reduction. Using

carbon credit offsets produced by weatherization programs could be a potential funding source since energy credits may be sold on the open market. In fact, three states have included energy conservation and efficiency improvements in their renewable energy credit portfolios. CSD is partnering with energy providers and a well-respected energy engineering firm to research the feasibility of implementing a carbon credit offset program in California.

CSD is working closely with the California Public Utilities Commission (CPUC) regarding the use of solar incentives for low-income households. CSD has funded three pilot programs using solar energy in low-income households (Southern California Forum – solar hot water systems and solar photovoltaic systems; Community Action Agency of Butte County, Inc. – solar hot water heaters in rural areas; and San Joaquin County, Department of Aging – solar ovens). The outcomes from the three pilots will be reviewed, analyzed, and evaluated. Solar energy funding will be available for low-income families and CSD and its network partners are prepared to partner with the CPUC to implement future programs.

- **Prepare the community network for disaster readiness**

Disasters disproportionately affect the low-income, because in addition to limited resources, many are aged, very young, medically fragile, isolated either socially or geographically, and often disconnected from helpful information and resources to ameliorate a situation that can affect health and safety. During the excessive heat event last summer, CSD was identified as a department that had a "first responder" community network with diverse outreach capabilities. In fact, the community provider network has at least one site in every county with the exception of two. CSD worked closely with the Governors' Office and the Office of Emergency Services during the excessive heat event on outreach to affected populations, including advancing the concept of "cooling centers," which one of our grantees operates in Riverside County. CSD sent a directive to all network directors authorizing and encouraging flexibilities in LIHEAP spending, and emergency repairs for air conditioning, rental of generators, transportation, and other similar actions that assisted many people susceptible to health dangers from the heat. Services included personal contact with the most vulnerable Californians through an extensive network of CSBG and LIHEAP providers and their subcontractors.
Last fall, during the E. coli outbreak in the Salinas Valley, CSD awarded a $50,000 grant from CSBG discretionary funds in a matter of hours to the Center for Employment Training (CET) to assist agricultural workers who had been displaced. During the most recent disaster, the freeze in early 2007, 32 CSD provider agencies were identified on the Governor's website for their accomplishments and services. One of those providers, La Cooperativa Campesina de California, was awarded a $50,000 grant for farm workers on January 25, very early in the disaster. This agency was also selected to distribute over $1.5 million in disaster relief by OES.

CSD places a high priority on disaster preparedness. In 2006, CSD designated a staff manager position as the disaster coordinator for the department. The dedication of this position is solely for the purpose of preparing CSD and the statewide network for disaster readiness. In late 2006, CSD conducted a disaster readiness survey to the entire network to determine the level of preparedness of community providers. Based on the information from the survey, CSD is developing strategies to assist providers with obtaining the necessary resources to raise their level of preparedness. CSD also established a statewide network Disaster Committee that meets quarterly to discuss and exchange information concerning disaster planning on the community level. The Disaster Committee was instituted shortly after the excessive heat event last summer. CSD continues to participate in meetings and collaborative training sessions with the Office of Emergency Services, including co-sponsoring an event in March distributing disaster supply kits to approximately 200 senior citizens and low-income Spanish-speaking families. Two Sacramento County network providers participated with CSD and OES for the occasion which was conducted in both English and Spanish. The provider network has been a conduit statewide for the distribution of disaster preparation publications and outreach materials in more than a dozen languages.

How does CSD work with other state agencies and with other departments to promote policy and program coordination among programs that service low-income families in California? Please comment specifically on coordination with employment and training programs. Do these state entities have a comprehensive, coordinated plan for providing this assistance? Are there efforts CSD could promote to encourage more coordination among the state departments who deliver services to low-income people?

As stated earlier, the coordination of CSD programs with other state departments is crucial to ensuring efficiency and effectiveness of operations. Our clients are often served by many different state programs and avoiding unnecessary duplication will benefit both the state and the individual seeking our services. The following examples illustrate our coordination with other state agencies and departments:

- **CSD is a member of the Low-Income Oversight Board**

This oversight board advises the CPUC on low-income water customer issues, compliance with the California Alternate Rates for Energy (CARE), and represents low-income ratepayers. The most significant achievement of this collaboration is the automatic transfer of LIHEAP participant information to the CPUC for automatic enrollment in CARE, eliminating considerable duplication of effort and reducing participant frustration in accessing utility assistance, while

increasing the enrollment of eligible participants. Nearly 35,000 LIHEAP participants have been enrolled in CARE under this process. A pilot expansion of this project involving clients with the federal Women, Infants and Children (WIC) program is in the planning phase.

- **CSD and the California Department of Education (CDE)**

CSD has collaborative projects with the California Department of Education (CDE) Adult Education Office on several programs that enhance the Naturalization Services Program including Adult Basic Education, English-as-a-Second-Language, and English Literacy and Civics Education Program. The collaboration enhances the Services Program and avoids duplication by requiring referrals of clients to CDE ESL classes. The following collaborative activities between CSD and CDE have been conducted:

- CSD and CDE exchanged information regarding the two respective programs: CDE EI Civics 2006/2007 programs and CSD 2006/2007 Naturalization Services Program.

- Naturalization Services Program staff worked with CDE staff during the 2006/2007 Request for Application (RFA) process to distribute the RFA to CDE EI Civics grantees.

- At the January 2007 Training/Workshop for NSP Grantees, the CDE Education Program Consultant provided a California EI Civics Resources presentation to CSD's Naturalization Services Program contractors.

- **Lead Hazard Control Program**

The Lead Hazard Control Program is an example of program coordination with multiple local partners. CSD provides lead hazard services in seven counties through partnerships with five community-based organizations (Sacramento, Sutter, Yuba, Santa Clara, Los Angeles, Humboldt, and San Bernardino). CSD works closely with the California Department of Health Services, Childhood Lead Poisoning Prevention Branch; the California Environmental Protection Agency; the California Occupational Safety & Health Administration; the California Department of Parks and Recreation, Office of Historic Preservation; the California Department of Housing and Community Development; the California Department of Education, as well as other charitable non profits and private foundations. The Childhood Lead Poisoning Prevention Branch within the California Department of Health Services (CDHS) provides outreach and education, blood screening, and case management information of elevated blood levels of individuals, especially children. CDHS also provides blood screening of children in targeted units and lead poisoning prevention education materials to CSD providers for distribution. The Lead Hazard Control Program works closely with LIHEAP.

- **Local Government**

On the local government level, CSD recently entered into a partnership with the Sacramento Metropolitan Air Quality Management District (AQMD) to provide funding leverage to enhance the heating efficiency of low-income homes and improve air quality in the region. The Sacramento LIHEAP provider, Community Resource Program, administers the Wood Stove/Fireplace Change-Out Incentive Program and will use LIHEAP weatherization funds for the cost of labor associated with installation of fireplace inserts, while AQMD pays for materials and training/certification of installation contractors.

- **Employment and Training Programs**

With respect to employment and training programs, increasing self-sufficiency and improving living conditions is one of the six core goals of the 46 Community Action Agencies included in the CSD provider network. All Community Action Agency directors sit on local Workforce Investment Boards (WIBs) and One-Stop Centers are derivatives of WIBs. Employment and job training are critical factors to meeting this goal, and 98% of the CSBG providers have training programs, employment services, categorical training and job programs (youth, small business development), or resume and interviewing classes. Many have multiple programs and several are solely or primarily training agencies, including the Sacramento Employment Training Agency (SETA) and the Center for Employment Training (CET), a migrant and seasonal farm worker agency. Many others include classes in ESL and/or basic skills to improve employment opportunities. In 2006, 10,083 low-income CSBG participants were unemployed and obtained a job and another 13,416 obtained skills and competencies required for employment and earned a training program certificate or diploma. I recently met with Director Saragoza of the Employment Training Panel (ETP) and we discussed several ETP programs, including the Special Employment Training Programs, which funds programs to improve skills and employment security in projects that support training for individuals with at least two barriers to full time employment. This particular program funds SETA, and I believe we have many other providers who may qualify for funding. I am requesting Director Saragoza to speak at the next quarterly meeting of the CSBG providers to further explore possible opportunities.

- **CSD and State Agencies**

My experience with other state agencies has been extremely positive and there are opportunities to better coordinate plans for providing assistance to low-income populations. There are differences in our missions and some funding sources dictate how resources can be used. Given that challenge, one of my goals is to identify how we can best manage common programs to deliver services economically and efficiently to those who are eligible. Continual communication and interaction is necessary to this process, and I intend to build

momentum in that direction. CSD can and will continue to encourage more coordination among state departments, particularly in the area of resource building. However, our funding is almost exclusively federal and our services are at the community level. Network agencies play an instrumental role in linking the low-income with other service providers in the community. The most current reporting indicates that there are more than 6,000 local partnerships among our CSBG network. These agencies excel at leveraging with every one dollar leveraged into $22 due to those partnerships. CSD will continue to find innovative partnerships at both the state and local level to forward our mission.

What is the role of local organizations funded by CSD in linking the low-income people they serve to other service providers in their communities? Are there examples where grantees of CSD have developed particularly effective links to other service providers?

- **Local Organizations and CSD**

CSD and its network interact with commissions, boards, local and federal governments, including the federal Internal Revenue Service, educational institutions, faith-based organizations, local businesses, non-profit organizations such as Volunteers of America, United Way, and the Legal Aid Society, utility districts, and enforcement agencies. CSD is only one of many funding sources to the network agencies; their community partnerships, both public and private, are vital to their delivery of services and to the leveraging process. The network has extensive subcontracts to deliver many of their services and could not function without both their partners and contractors. In 2006, CSBG grants totaled almost $56 million. A conservative estimate is that the value of delivered services totals $1.2 billion. The network played a vital role in the recent freeze disaster by participating in many one-stop events, providing assistance and referrals for housing, job training, food and shelter, health care, and other vital services. CSBG-funded agencies are often a critical link between the low-income and other service providers in the community and statewide.

- **CSD and other Service Providers**

An excellent example is a network provider for the County of San Diego, Community Action Partnership (CAP), who linked the Earned Income Tax Credit (EITC) preparation services with financial education and asset building activities to maximize income, increase purchasing power, and ultimately built assets for CSBG-eligible individuals and families. The County of San Diego provided free tax preparation to over two thousand individuals and financial education to over 800 which resulted in $5,841,750 claimed in EITC and Child Care Credits by the CSBG-eligible participants. The federal Internal Revenue Service estimates that $20-25 million EITC dollars are left unclaimed in San Diego County each year. Eleven organizations worked with the County of San Diego including Home Start,

Inc., South Bay Community Services, Metropolitan Area Advisory Committee, North County Lifeline, Interfaith Community Services, American Association of Retired Persons (AARP), Internal Revenue Service (IRS), Hunger Coalition, County of San Diego Executive Team, and Cox Communication. Services provided included free tax preparation, financial education and workshops, marketing and outreach, food stamp outreach and referral, enrollment in low-cost or no-cost health insurance, volunteer management and retention, community outreach and awareness, marketing, training, and television commercial airtime.

Please give a brief overview of the implementation of NSP, including the number of persons assisted by the program and data on citizenship and any other program outcomes for these individuals.

- **The CSD Naturalization Services Programs (NSP)**

It is estimated that 2.7 million eligible legal permanent residents live in California. The NSP assists legal permanent residents in obtaining citizenship by providing application assistance, interview preparation, and citizenship testing. Since 1998, CSD has been appropriated a total of $27.4 million to administer the NSP program. Over 99,000 individuals have been assisted with the citizenship process. In accordance with the 2006-07 State Budget, CSD received $3 million for the 2007 Naturalization Services Program. CSD receives five percent for administration and the remaining funds are allocated to contractors that provide direct services to the clients.

In October 2006, CSD distributed a Request for Application (RFA) to over 200 community-based non-profit organizations and local public agencies to solicit proposals to provide services to legal permanent residents. Eighty-three applications were evaluated and thirty-two agencies were awarded contracts. Based on the contracts awarded, the average cost per client is $257 and an estimated 11,089 clients will be provided naturalization services. Since January 2007, over 2,000 individuals have been assisted. A follow-up component was added to the new contracts, but since it takes approximately six months to complete the citizenship process, no outcome results are currently available, but CSD expects a 90% plus success rate.

What are some of the most effective outreach and referral strategies used by local organizations receiving NSP funds?

- **Local Agencies/NSP Funds**

Local agencies use a variety of outreach and referral strategies, including utilizing appropriate local partnerships, advertising in local ethnic newspapers, media advertising (radio and television), placing program information in church

bulletins, public service announcements, presentations at local community social events and fairs, distribution of informational pamphlets at One-Stop Centers, and conducting citizenship workshops throughout their service area. All of the agencies have a minimum of three years of funding and program experience involving naturalization services. Most have established collaborative partnerships and referral systems with other providers to ensure clients receive the services necessary to successfully complete the naturalization process.

Examples include:

- Partnership with Immigrant Legal Resource Center (ILRC), California Rural Legal Assistance (CRLA), and Catholic Legal Immigration Network Inc. (CLINIC) for pro bono legal services.

- Referral to California Department of Education (CDE) for English-as-a-Second Language (ESL) and El Civics-Citizenship classes.

- Collaboration with and referral of clients to other local community-based organizations.

Please briefly describe the implementation of the CSBG program, including the number and types of local organizations funded, the extent to which funds target urban and rural communities, and the number of individuals that receive various types of services.

- **Community Services Block Grant (CSBG)**

CSD allocates federal Community Services Block Grant (CSBG) funds to a total of 63 local community-based (public and private non-profit) and government organizations. The split between public and private organizations is approximately 50 percent. All are under local control and most are administered by a tripartite Board. Funds are allocated based on the number of persons living at or below poverty level in each agency's respective service area in relation to the total number of persons living in the State, as reported in the most recent available decennial census. In 2006, CSBG funds were used to provide 2,098,296, or about 45 percent of California's low-income population, with various types of services, such as education and job training, employment and housing services, and nutritional and health care needs.

How does CSD monitor the performance of local organizations that receive CSBG funding? What is CSD's role in providing training and technical assistance to support CSBG projects?

- **CSD Monitoring**

In my nine-month tenure, I have met personally with many Boards in the provider network community. For the public agencies, I typically meet with the Board of Supervisors, and with private agencies I will meet with their organization's governing board. I have also met one-on-one with many of the executive directors of the network at their site to discuss local issues, identify solutions for training or resource needs, and share information.

CSD performs an annual review on all CSBG agencies. This review is used to assess each agency's adherence to the CSBG federal and state laws as well as the CSD contract and to determine the focus of every two-year onsite monitoring visit. After an on-site monitoring review is completed, a written report is prepared which outlines any deficiencies relating to noncompliance of goals, standards, and requirements and sent to the grantee. Grantees are required to respond to monitoring findings as identified in the Monitoring Report and CSD staff conducts follow-up reviews.

- **Technical and Training Assistance**

CSD conducts annual Training and Technical Assistance Workshops for its contracted agencies. Training is provided in topic areas that will assist in fulfilling the goals of the CSBG program in addition to capacity building and resource development.

In 2006 CSD entered into a Training and Technical Assistance contract with the California Nevada Community Action Partnership (Cal/Neva). Cal/Neva is the association of California and Nevada Community Action Agencies (CAA's) and other non-profit organizations that serve over four million low-income individuals each year. Cal/Neva provides training in subject areas such as Board Governance, Board Executive Leadership, Fiscal Capacity, Board Executive Leadership, Earned Income Tax Credit (EITC), Individual Development Account (IDA) and Capacity Building. In addition, departmental field representatives spend approximately 30% of their time responding to questions from the agencies on the contracts and reporting forms and providing technical assistance.

What actions did CSD take to provide relief assistance to persons affected by the freeze?

- **CSD Actions**

Subfreezing temperatures that hit the Central Valley during January 2007 particularly affected the jobs of many migrant and seasonal farm workers and their families, particularly those working in the citrus industry. CSD's providers include five agencies that specifically serve migrant and season farm workers including the California Human Development Corporation; Center for Employment Training; Central Valley Opportunity Center, Inc; La Cooperative Campesina de California; and Proteus, Inc. These organizations cover four districts throughout California.

The Office of Emergency Services is the statewide coordinating entity that receives all requests relating to a disaster. During the January 2007 freeze, CSD worked in close collaboration with OES to support requests and respond to local need.

- **CSD Efforts**

Pre-Disaster - CSD sent a notification and reached out to network agencies regarding the forecast of coming cold weather temperatures.

January 9, 2007 – A press release was sent by the Governor's Office of Emergency Services (OES) and California Health and Human Services Agency (CHHSA) titled "State Emergency and Health Officials Urge Preparedness in Response to Extreme Cold Forecasts." CSD immediately forwarded this information to network agencies to help them prepare their communities for freezing temperatures.

January 10, 2007 – CSD sent out an additional press release to local media and shared with network agencies "Cold Weather a Threat to the Health and Safety of the Poor." This article provided low-cost cold weather tips to keep warm, tips on health and safety and links to OES and DHS websites for more cold temperature information.

January 10, 2007- CSD developed an outreach template for network agencies to use within their communities to bring focus on "Cold Weather Danger to Vulnerable Populations".

January 11, 2007- CSD sent out an email communication to LIHEAP services providers bringing attention to the severe cold weather forecasts in certain geographic areas throughout the state and the approval of flexibilities to enhance the abilities of service providers in responding to the cold weather needs within their communities.

January 12, 2007- Governor Schwarzenegger proclaimed a State of Emergency due to Extreme Low Temperatures. The Governor directed State Agencies to respond and provide assistance to the Freeze Disaster with CSD to provide outreach programs to provide information to the public about home heating and energy assistance programs.

Community Disaster Response: Thirty four of CSD's network agencies responded to the freeze disaster by providing services to assist the migrant and seasonal farm worker population, and other vulnerable and low-income populations in those impacted counties. Immediate assistance included opening warming centers, providing food, blankets, sleeping bags, portable heaters, clothing, emergency housing and shelters, which included motel vouchers, and transportation to warming shelters. These actions took place prior to any declaration announced by the state, assisting workers in hard-hit counties including Tulare where over 2,000 agricultural workers were provided utility assistance with LIHEAP funds. Network agencies collaborated with One-Stop Centers in affected counties by accepting or directing referrals to needed services such as job assistance, job training, food programs, healthcare information, low-income energy assistance, or processing of freeze-related claims. CSD provided a $50,000 grant to La Cooperativa to immediately (within hours of request) to provide freeze relief assistance to 200 affected families with food vouchers, shelter, utility assistance, and rent/mortgage assistance in the counties of Tulare, Fresno, Kern and Kings.

Recovery: CSD continues to collaborate and work with OES and other state agencies in providing freeze disaster assistance. Weekly disaster briefings continue to occur with OES, with updated efforts identified. Participants include OES and its regional offices, the American Red Cross, California Office of Homeland Security, California Highway Patrol, Department of Transportation, Department of Health Services, Emergency Medical Services Authority, California Department of Food and Agriculture, Department of Social Services, Department of Aging, Department of Rehabilitation, the Salvation Army, One-Stop Center Managers, California Volunteers, Department of Labor, and Employment Development Department.

CSD Collaboration: On March 27, 2007, CSD collaborated with the Governor's Office of Emergency Services (OES) and provided over 200 (72 hour) disaster preparedness kits to seniors and low- income Spanish speaking families at the Chabolla Community Center in the City of Galt. CSD worked with Community Resource Project (CRP) and Sacramento Education and Training Agency (SETA), two of CSD's network providers in Sacramento County to provide these kits to their low- income clients.

I am working to make the disaster-preparedness kit distribution a statewide program. CSD also participated in the Sacramento County Department of Health

and Human Services, Public Health Division's, "Operation Reach Out". As part of Public Health week (April 2nd – 6th) CSD joined together with the Sacramento Regional Citizen Corps Council volunteers and the Sacramento County Public Health Partners to help distribute disaster preparedness guides. CSD's network agencies, CRP and SETA, received these disaster guides and provided them to their clients in English, Spanish, Russian, Mien, Chinese, Hmong, and Vietnamese.

Is there ongoing need for assistance to those affected by the freeze? If so, are there opportunities to obtain additional federal funding for continued relief efforts?

- **Impacts of Freeze**

Impacts of the freeze will be felt by low-income individuals for many months to come. The freezing temperatures destroyed citrus crops, left many people unemployed, and created undue hardship for many to make rent, mortgage and utility payments. Governor Schwarzenegger identified 18 counties as declared disasters areas. He also requested federal disaster assistance for 31 counties. Federal assistance was approved for 12 California counties for disaster unemployment assistance and food commodities for Fresno, Imperial, Kern, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare and Ventura. An additional $140 million was approved by the federal Senate Appropriations Committee in response to a letter written by Governor Schwarzenegger for 2007 Freeze Relief. At this time, continued funding for critical services for the low-income and vulnerable population is needed for on-going services that need to be rendered for the long term, such as job training and employment, health care, food services, utilities payments, rental and mortgage assistance.

- **Additional Funding**

CSD continues to monitor other potential funding avenues, including federal appropriations that may assist or support the services of its network to provide emergency agriculture disaster assistance for agriculture producers, manufactures, and workers in the state of California.

CSD has also directed network agencies to work with their city or county governments to apply for the following federal monies:

  - Community Service Development Block Grant released by the federal Department of Housing and Community Development Division of Financial Assistance for the January freeze disaster.

- The federal Home Investment Partnership Program released additional monies for the January freeze disaster recovery - $2 million for tenant-based rental assistance.

- Community Service Development Block Grant Freeze Allocation - $4 million for public services and economic development activities designed to mitigate or address the effects of the January 2007 freeze.

Governor Schwarzenegger has also formally asked the President to award the remaining $20 million in 2006 and a substantial portion of the $200 million in 2007 federal Emergency Contingency Funds to help with the rising costs of heating and cooling homes attributed to climate extremes experienced by California in both the summer and winter.

Please briefly describe the implementation of LIHEAP and DOE weatherization assistance programs, including the amount of funding available statewide, the number and type of households that receive different types of services, and the extent to which funds are targeted to meet needs associated with cold weather and hot weather months.

- **LIHEAP and DOE Weatherization Programs**

Funding for the weatherization program is primarily from two federal grants, the Health and Human Services Low-Income Energy Assistance Program (LIHEAP) and the Department of Energy Weatherization Assistance Program (WAP). For the 2006 and 2007 calendar years, the combined annual funding levels for weatherization were $46.5 million and $28.7 million, respectively. The funding levels for cash assistance are about twice these amounts. CSD utilizes a network of 41 community-based organizations to determine eligibility and provide direct weatherization services to qualified low-income families. Weatherization services are designed to increase residential dwelling heating and cooling efficiencies thus reducing energy costs and mitigate health and safety hazards (indoor air quality/fire hazards). Priority for weatherization services is given to households with elderly, handicapped, or young children as members and households with high energy costs as a percentage of income.

With a typical funding appropriation, approximately 21,000 households are weatherized in a year. Following is an annual statistical overview for the types of households assisted, income levels and vulnerable population demographics:

Poverty categories (based on federal poverty guidelines)	Household count
Under 75%	5655
75% - 100%	3663
101% - 125%	5247
126% - 150%	2730
Over 150%	3686

Vulnerable population category	Household count
Elderly (60 yrs or older)	6358
Disabled	4751
Children 5 yrs or under	10,984

What is your assessment of CSD's role in weatherization assistance? How do you measure its success?

- **CSD Weatherization Role**

CSD is responsible for contract administration and monitoring of 41 weatherization providers, federal reporting, and acting as a liaison with utility programs throughout the state. In addition, CSD has a major technical role with respect to weatherization and is responsible for identifying qualified weatherization measures, drafting installment procedures, developing health and safety standards and emergency guidelines, and establishing cost limits for both labor and materials on the various measures. Currently, CSD measures success by outputs -- the number of qualified clients served within the contract term and an estimate of the average annual energy savings based on engineering studies performed for the Federal Department of Energy Weatherization Assistance Program. As mentioned previously, CSD will be looking to improve its data analysis and weatherization reporting to the household dwelling level in 2008 and plans to measure success of outcomes – or cost-effectiveness of measures by household and on average for the year.

To what extent are local service providers of LIHEAP and DOE weatherization assistance programs able to leverage other sources of funding for weatherization activities, such as resources of private and municipal utility companies?

- **LIHEAP and DOE Leveraging**

CSD and its network providers participate in the federal LIHEAP Leveraging Incentive Program which provides cash incentives to states that acquire non-

federal leveraged resources and use these non-federal resources to expand the effect of the federal LIHEAP dollars. The primary source of leveraged activity involves utility company CARE (discount rates) and weatherization referrals. Since 1991, California has received more that $34 million dollars in leveraging awards. For the past several years California has received the maximum leverage award which amounts to about $2.5 million.

State Water Resources Control Board

Executive Office

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Arnold Schwarzenegger
Governor

April 18, 2007

Ms. Nettie Sabelhaus
Senate Rules Committee
Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Thank you for the opportunity to appear before Senator Perata and the Senate Rules Committee on April 25, 2007. Enclosed will be my personal response to the specific questions Senator Perata has asked of me. However, before I respond to the Senator's questions, I would like to express my sincere appreciation for having the opportunity to serve the people of the State of California as a member of the State Water Board.

As you are well aware, my quest for appointment was both challenging and in some sectors controversial. In addition to the fact I competed with a large pool of qualified candidates, my occupation as a farmer made me a member of the regulated community. I continue to view the opposition to my appointment not as a personal attach, but instead as a simple philosophical difference of opinion. In other words, I believe that some groups felt that a member of the regulated community would bring a bias and resistance toward an environmentally based process that would hinder the progress and direction of the State Board. I remain firmly convinced that my successful business background brings an essential element of balance to the State Board. I believe we currently have a strong cross section of personalities and experience on our board and I anxiously look forward to continued relationships with my colleagues.

Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board? How will you measure your success? Please be specific.

   As we continue to develop policies and regulations pertaining to our mission at the State Water Board, I hear on a regular basis from the

stakeholders and the general public alike a common request for consistency. Our issues continue to become increasingly complex, particularly in the field of water rights and water quality--both surface and groundwater. I will address the specific question a bit later, but for now I will say that, in pursuit of consistency, an essential goal for the entire board should be to improve our interactions with all nine of the Regional Boards. My colleagues and I recently received word that our new Executive Director, Dorothy Rice, has hired Jonathan Bishop as a Deputy Director at the State Board. I am sure I speak for the entire State Board when I say that Jonathan's experience as Executive Officer of the Los Angeles Regional Board will greatly enhance our ability to interact with all the other Regional Boards.

At the end of my tenure on the State Board, I hope to be able to reflect back to a long list of accomplishments. This generalization aside, I have three specific goals I certainly intend to pursue with great vigor. When I am successful, the measure will be self-evident.

- **The Delta**: The Sacrament San Joaquin Delta is the remnant of a once natural environment. We began manipulating and modifying the Delta in 5h3 1800's through the process of reclamation. During the last 150 years we have created and managed to the best of our ability hundreds of thousands of acres of some of the most productive farm land in the world, developed two slip channels for ocean-going vessels, and we have developed a system of conveyance that supplies water for industry and roughly 2/3 of the population of our state. Today the Delta is, at best, in a horrible state of disrepair, and quite possibly on the verge of catastrophic failure. While increased Delta pumping has stimulated enormous urban agricultural and industrial development south of the Delta, these transfers have resulted in or contributed to an assortment of unacceptable events. As a direct result of greater demands for water upstream of the Delta, particularly in the San Joaquin Drainage, receiving waters in the Delta are often dominated by higher percentages of agricultural drainage which are increasingly higher in salinity. As urban populations grow on the periphery of the Delta, municipal treatment plants continue to discharge even higher levels of salt into the system. Seasonally, the pumping also creates a draw from the Pacific Ocean that results in even greater amounts of salts at times. Cumulatively, the aforementioned events result in the export of hundreds of thousands of tons of salt

south of the Delta on an annual basis. History clearly tells us that similar events, if ignored long enough, have destroyed civilizations. Coupled with the evolving effects of a plethora of invasive species on the fragile ecosystem of the Delta and documented decline of pelagic organisms, the system is especially vulnerable to the effects of the anticipated climate change.

I am hopeful that a clear direction for the remediation of the Delta will come, at least in part, from the Governor's Delta Vision Process. Coupled with a clear recognition of immediate need by Resources, BOR, and certainly the State Board, I look forward to my role in this collaborative process.

- **Clean Drinking Water**: It has been clear to me, long before my tenure on the State Board that many rural communities lack adequate supplies of clean drinking water. In my childhood, the small community where my Father's business was based had extremely high levels of naturally occurring arsenic and groundwater contamination from poorly designed septic systems. Fortunately, this community was not improvised and was sophisticated enough to pursue matching funds and other resources to develop a small municipal wastewater plant and eventually locate a site for an acceptable well. It is evident that many small communities throughout the state, but particularly in the San Joaquin Valley and the Central Coast Region have similar chronic problems. Board Chair, Tam Doduc and I share the same feelings about the immediate need to provide tangible relief to these communities in an expedited fashion. We have been working with the Department of Health Services to help interface their Prop 84 Clean Drinking Water funds with, among others, our Small Community Municipal Waste Water Funds. I believe this effort, along with the exploration of surface water delivery options for areas where ground water may not be a viable option, will provide tangible results. Currently the Friant Water Authority is preparing a feasibility study that will identify opportunities for increased small community surface water deliveries. We have additionally been working with members of several environmental groups and the California Rural Legal Assistance in the aforementioned process, and we are seeking their input as to the structure of a non-profit organization that could collectively help disadvantaged small communities identify any available resources

and facilitate the processes of application and development. For years these small towns have received acknowledgement of their problems and little else. I personally feel this lack of action is unacceptable. I am confident that in the near future we will have successful pilot projects and a direction that will lead to clean drinking water and acceptable municipal waste water treatment for a long ignored segment of our population.

- **Discharge Waivers**: I was first involved in the political process with the Rice Industry in the early 1990's. At the time our two primary herbicides were being discharged at high levels into the Sacramento River Drainage. Our industry association worked with the Registrants, DPR, OEHHA, and the cities of Sacramento and West Sacramento to develop waste discharge requirements and the cultural practices that allowed the industry to continue using the products while eliminating residues by nearly 100 percent. This event, over fifteen years ago, made it clear to me that agricultural dischargers need to participate in the monitoring of their effluence. Simply put, it their drainage does not contain problematic levels of pesticides, nitrates, phosphorus, or other materials, they will be gratified. If, on the other hand, they have discharge issues, they should know how to address them. I do feel that it is incumbent upon the regulating community to provide dischargers with realistic lists of constituents and not base concerns on the latest detection levels. I would encourage all the Regional Boards to develop Discharge Waivers that are appropriate for their specific region. I do not feel that a universal program would necessarily deal with the unique regional issues across the state. It will remain a goal of mine to implement a well functioning discharge waiver for the entire state, a system that will lessen the burden of regulation on responsible dischargers and make responsible those whom are not.

We are in the infancy of groundwater monitoring in this State, and I feel that the Water Boards will continue to make much greater strides to monitor and protect this invaluable resources.

Role of the State Board

2. What is your view of the role of the state board should play in relation to the regional boards? Do you believe the state board should play a greater role in coordinating policies among the regional boards to ensure consistency among regional boards and accountability for water quality programs? If so, what specific additional activities do you think that the state board should undertake?

    - It is the role of the State Board to set statewide policy as directed by the Porter-Cologne Water Quality Act. It is our responsibility at the State Board to ensure the Regional Boards across the sate effectively and consistently adhere to these policies. Water Quality Coordinating (WQCC) meetings and staff training provide guidance and education to Regional Board staff. Fewer issues petitioned to the State Board for review would be an indication that our staff is doing a better job. The petition process provides a sound appellate mechanism between stakeholders, the Region and the State Board. There is probably no area that exemplifies the need for consistency more than the interaction of the State and Regional Boards.

    - It was clear to me during the last WQCC meeting that any significant change in the structure or operation of the Regional Boards will have to come from the State Board or through legislative action. In my brief tenure at the State Board, it appears to me that the State staff is doing well in the evolving process of policy coordination. At this WQCC meeting it was clear that the Regional Executive Officers and Boards presently lack the introspective ability to change themselves. I do feel that any changes that come forth must include, to as great a degree as possible, the State and Regional Board members themselves so that we can do our best to discourage any elevation of a process driven only by staff at the regional level.

      Service on any regional board requires an enormous level of commitment and community service. We as a state are blessed to have individuals that are willing to shoulder the responsibility required of regional board members for essentially less than minimum wage. I believe it would help it Board chairs were, at the very least, a part-time position.

3. How often do you visit the regional board where you are a liaison? What do you do as a liaison with that regional board?

   When first appointed to the State Board, I was designated as liaison to both the Central Valley and Colorado River Boards. Unfortunately, during this initial period the Colorado River Board, lacking a quorum held no meetings. Consequently, my interactions were limited to staff and the Board chair. Except in the case of unavoidable schedule conflicts, I regularly attend at least one day of the Central Valley board meetings. Furthermore, I have regular contact regarding a variety of issues with Pamela Creedon, Executive Officer for the Central Valley Board. With the exception of Dr. Karl Longley, my exposure to the other Region 5 Board members has been somewhat limited. Chair Doduc recently asked if I would assume the role formerly held by Art Baggett as liaison to Region 1. It is my intention to attend their meetings on a regular basis. It should be noted that scheduling conflicts will occasionally will be unavoidable with both Region 1 and 5; I say this not out of indifference but instead as an undeniable fact.

   I found that the WQCC meeting this past Fall gave me the best insight as to the issues and personalities of many of the Regional Board members and staff. This experience was helpful in regards to all the regions.

4. Are there specific steps you think the state board should take to better coordinate water quality programs with related programs at the Department of Fish and Game, the Department of Toxic Substances Control, the Department of Water Resources and other state and regional water agencies?

   As I address the subject of interaction between agencies, it is important to be mindful that the authority for the regulation of water quality in the State is the specific responsibility of the State and Regional Boards. We certainly cannot implement our policies without close interaction with a variety of State and Federal agencies. These interactions primarily occur at the staff level. This having been said, I have found Secretary Adams to be very willing to include Board members in a variety of briefings. Recently I have participated in a great number of interagency meetings related to food safety (E-coli), the Klamath River issues, and the Pelagic Organism Decline (POD).

- I believe State Board and DWR have had a well-coordinated interaction regarding the awarding of Prop 50 grants.
- Discharges from irrigated lands are regulated in conjunction with several other agencies:
  - The State and Central Valley Regional Board have a well-functioning pilot program that utilizes the Ag Commissioners in several counties to help with the implementation of the Central Valley Ag Waiver. I hope that the success of this pilot program will lead to cooperation from other counties.
  - State and Regional Boards work closely on irrigated land discharges with DPR, CDFA, County Ag Commissioners and the U.S. Soil Conservation Service.
  - The State Board is currently working with DPR to develop a Statewide Urban Pest Management Program. This is an essential function given ever increasing levels of pesticides that are being found in urban storm water run-off.
  - Especially in light of recent food safety issues, the State Board works at staff level with IWMB on rules and regulations of soil amendments, particularly biosolids, manure and compost.
  - Recycled water issues are coordinated with the Department of Health Services.
  - The Board has a well-functioning relationship with DTSC in regards to brownfield sites. This is due to an MOU that clearly distinguishes which agency is responsible for a given site. This process has recently been adapted to prevent venue shopping type situations.
  - The Water Boards work closely with USEPA, DTSC, and other agencies to identify and clean up abandoned mines.
  - The State Board is currently conducting scoping sessions to evaluate various proposed changes in the Wetlands and Riparian Policy. I have hope that our policy will soon be consistent with the Department of Fish and Game and the Department of Water Resources. Additionally, a policy consistent with the Army Corps of Engineers and U.S. Fish and Wildlife Service would be a considerable improvement from existing policies.

5. Accountability to the public is critical to ensure continued confidence in the state and regional boards' performance in protecting the quality of the state's waters. Are there specific steps you recommend that the state and regional boards take to improve accountability and transparency to the public?

   By the very nature of the structure of the Water Boards, provisions on many facets of our responsibility ensure transparency and public accountability.

   - Due in part to their locally appointed members and local meeting sites, the Regional Boards provide transparency to a greater number of stakeholders than the State Board.
   - Scoping meetings and workshops at the State level encourage well noticed public forums.
   - The decisions of both the State and Regional Boards are made in settings with unrestricted public access. Interested parties have the ability to provide written comments and verbal testimony before both the State and Regional Boards.
   - The State Board has the ability to provide service to the community through public outreach and participation. Quite frankly, this is an area where the State Board should make some improvement.
   - Porter-Cologne provides that members of both the State and Regional Boards shall be associated within a specific category of expertise. Furthermore, regional board members must reside or at least have significant business interest within the region they serve. These designations provide the residents of California with a consistent cross-section of board members.
   - All Board meetings are duly noticed to the public as required by the Bagley Keene Open Meeting Act.
   - A resident of a specific region or a party affected within a region can request a meeting of a regional board.

State Board Funding

6. Do you believe the board can fulfill its mission adequately with funding that is so far below what is needed to do the job?

I am afraid that we all might be guilty of using "Lack of Funding" as a convenient excuse. Budget short-falls are an unpleasant fact of life in government at any level. While it is certainly true that funding issues hamper the Water Board's ability to adequately fulfill its missions at times, I believe the issue is more complicated than the short-term ebb and flow of the State's coffers. The vast majority of the Water Board's staff have very specialized skills and once they are lost in cost cutting moves it may well take considerable time to retrain a replacement. Especially when senior staff is lost for one reason or another, the longer term loss of institutional knowledge should never be underestimated. As in any business, succession planning is critical to the long term viability of the Water Boards.

This being said, it is imperative that when budget requests are submitted they are fully justified and fiscally prudent. If policies or the economy give the Water Boards less than we truly need to function, just as in business, it is the Water Board's responsibility to prioritize activities to fit budgeting parameters. Seeking this balance is easy to talk about, while in reality it is an extremely challenging issue, especially for staff. Without going into excessive detail, it would be accurate to emphatically state that the Water Boards' core regulatory programs are affected by budget shortfalls.

- NPDES permits are the primary regulatory tool provided by the Clean Water Act. Water Board internal analysis shows a total annual need of 259 PY's to effectively administer the NPDES Program, but we currently get by with 106 PY's. This staff shortfall results in less than the prescribed number of annual permit holder facility inspections and a dramatic backlog in reissuing of expired permits. Many in the environmental community regularly, and with good cause, express dissatisfaction with our CIWQS database. In reality, the discharge monitoring reports (DMR's) are at best reviewed on an irregular basis.

- Storm water—Types of Permits Covered:
  - Phase I Permit: 27 permits that address storm water discharges from 275 cities, counties and Cal Trans.
  - General Phase II Permit: covers approximately 900 small cities and institutions.
  - General Industrial Storm water Permit: covers about 9,000 locations.

- General Construction Storm water Permit: covers roughly 21,000 projects.

The magnitude and scope of storm water permits is evident by virtue of the gross numbers. In reviewing internal data, it is clear that regular site inspections are infrequent and there is a significant backlog of new permit applications and renewals. Without adequate inspections it is only human nature to push compliance to unacceptable levels. From the standpoint of equity, this creates an unfair situation for all dischargers that fully live up to their obligations.

- Waste Discharge Requirement (WDR) Program
  - There are approximately 4,500 permitted facilities in the state. Waste discharge requirements are seldom updated and most facilities are rarely inspected unless they are considered a special threat.
  - Only the Santa Ana Region has developed a sound strategy to protect and preserve the beneficial use of ground water. Overall progress has been made regarding the discharge to groundwater of hexavalent chromium, solvents, and gasoline. However, effective policy is lacking in several areas. This is especially true with regard to salts, including nitrates.

If funds were available today, bringing these critical core programs fully up to speed would take time that we really do not have. Prop 50 and 50 million dollars to implement Phase I of GAMA (Groundwater Ambient Monitoring). Additional funds will need to be allocated in the next several years if a second cycle of monitoring is to be accomplished.

7. How does the board prioritize activities given it does not have sufficient funding to carry out its core regulatory program?

There is not an exact formula to guide the State Board in regards to prioritizing activities. Generally speaking, where resources are limited, activities in core programs are often driven by compliance history, statutory and regulatory requirements, and often by external complaints. Several specific mechanisms help Board members and staff prioritize at the Water Board. First, Board members have a place holder on board agendas for their priorities. Second, Board and staff hold annual off-site meetings where amongst other items, priorities are discussed at length.

Lastly, our Strategic Planning process gives stakeholders a chance to express their priorities.

Waste Discharge Permit Process

8. What role does the state board play in monitoring and advising the regional boards about the requirements in law and the process to be followed for regulating polluted runoff? Should the state board help the regions address under-regulated polluted runoff? What specific steps have been taken by the state board to address urban runoff or polluted runoff from sources like the application of pesticide or fertilizer?

   We are constantly reminded of the Regional Boards' semi-autonomous nature. The good news is that they tend to be less independent during the budget allocation process. As mentioned earlier, the regular WQCC meetings provide us with a great forum to "advise". The State Board holds monthly meetings with Regional Board executives to specifically discuss issues and monitor ongoing progress. The petition process rulings make it very clear to the Regional Boards how the State Board feels about issues brought before us. Additionally, if the State Board feels a critical issue that should have been petitioned was not, the Board reserves the right to take the issue up on its own motion. Certainly the State Board supports the efforts of the Regional Boards with respect to Irrigated Land Discharge Waivers. Currently, the Central Coast, Central Valley and Los Angeles Regional Boards have active conditional waivers, with similar programs being developed by San Diego and Santa Ana. In the North Coast Region, forestry practices are a major source of polluted runoff. I feel the State Board is actively engaged with the aforementioned Regions and others to address previously under-regulated polluted runoff.

9. Do you support additional steps to reduce surface water contamination by dischargers of polluted runoff such as irrigated agriculture, grazing, confined animal facilities, and timber operations? What about groundwater contamination?

   Urban runoff of pesticides and fertilizer are increasing at a rapid rate. Regional Boards in affected areas have or are in the process of establishing TMDL's to restore water quality in urban creeks. The State Board is very supportive of these efforts. DPR and the State Board are currently working together on the Urban Pest Management Strategy. We

have additionally funded the Urban Pesticide Pollution Prevention Project. These programs provide outreach and education to urbanites about the environmental hazards associated with pesticide and fertilizer use as they affect urban landscapes.

As discussed previously, I am very supportive of the whole concept of well managed conditional discharge waivers. It should be noted that an extremely high level of participation by dischargers is essential for success. In the North Coast, Central Coast, Central Valley and Lahontan Regions, the respective boards have waivers that cover a variety of timber operations. For the most part, timber waivers closely resemble the California Department of Forestry's Forest Practice Rules. Upwards of 75 percent of our state's large confined animal facilities are located in the Central Valley Region. Aside from existing and developing State programs that regulate CAFs, efforts continue to be made that will ensure that California programs are in compliance with recently revised Federal CAFO regulations. From a Water Board perspective, ground water contamination from nitrates and other salts are a primary concern associated with all confined animal facilities. The Central Valley Board is in the final draft stage of a dairy permit that will include, among other facets, a comprehensive ground water monitoring program. It should be mentioned that both the Santa Ana and Colorado regions require dairies and feedlots to have NPDES permits

Upwards of 25 million acres of public and private land is used for non-irrigated grazing in California. There are vastly different circumstances between regions of the most effective means of dealing with water quality issues related to grazing. For example, the Central Coast Regional Board is actively working with the State Board and DHS on E-coli and the relationship between livestock, wildlife, and food-borne illness.

In conclusion, regarding this question, I would like to emphasize my commitment to diligently pursue steps to significantly reduce agricultural runoff contamination to both surface and ground water.

Perchlorate

10. How is the state board assisting the regional boards with the perchlorate problem? Is each board addressing this problem independently?

The sources of Perchlorate and responsible parties vary widely from site to site. For this reason, the Regional Boards treat each site on a case by case basis. Regional Boards are currently dealing with over 30 perchlorate contamination projects. I am limited on specific responses because of the pending Rialto Hearing in which I will participate. However, the State Board did provide the Santa Ana Region with over 5 million dollars in grants earmarked for well head perchlorate treatment.

11. Is the testing, monitoring, and remediation of contaminated surface water and contaminated groundwater uniform throughout the regional boards? If not, does the board intend to provide guidance in this area for surface water? For groundwater?
    - Groundwater: Certainly the Water Board's best developed and functioning groundwater monitoring and remediation efforts have been concentrated in the area of underground petroleum storage tanks and other generally industrial related (non UST) contaminated sites. Previously, I mentioned the MOU between the Water Board and DTSC, which delegates authority to one or the other on the above-mentioned sites. Generally speaking, the testing and monitoring methodology is very consistent throughout the State. Remediation protocols need to have the flexibility to deal with individual constituent and site-specific considerations. The Water Boards and DTSC developed a Uniform Site Assessment Program that helps ensure consistent site assessment.

      Quite clearly, California is in the infancy of policy development in regards to ground water analysis and remediation from sources other than those previously mentioned. I wish I could assure you that I had identified the funding and the exact programmatic solution to this clearly deficient aspect of water quality; I can only say that we are making some progress.

    - Surface water: I have previously mentioned that the existing conditional discharge waivers address specific regional surface water concerns. Regions without waivers deal with their regionally specific issues of concern such as urban storm water, timber practices, etc. Given geographic differences from region to region, surface water monitoring and remediation can be effective without necessarily being uniform between regions. The Surface Water Ambient Monitoring Program (SWAMP) does provide a consistent base of protocols for

sampling, and a complete set of well-defined water quality data elements.

E.Coli

12. Does the Porter-Cologne Water Quality Act provide the regional and state boards with sufficient authority to deal with the potential spread of E.coli from domestic animal production, wild animals, manure spreading, or irrigation practices? If so, should the state and regional boards act to help prevent contaminants like E.coli from entering into the food chain from water borne sources? What steps do you support at the state and regional board level?

I would assume this question deals more specifically with leafy greens and fresh vegetables in the food chain. A distinction is relevant here because while more other parts of the food chain make an effort to eliminate various strains of E-coli and other bacteria from their unprocessed commodities, they also generally have a well-defined Kill-Step in processing. With the exception of best management practices and chlorination, generally speaking the fresh produce industry is much more vulnerable to contamination in their end product.

Certainly the Water Boards have the authority to regulate the discharge of, in this case, manure based discharges in order to keep pollutants from spreading to surface waters. If I understand correctly, we do not have authority to deal with bacteria spreading from wild animals. In cases where the spreading of manure causes serious threats, in this case to surface water, these actions can be regulated.

It is clear that at the national and state level there is a dire lack of knowledge and the ability to address the problems associated with E-coli and other deadly forms of bacteria. To date, we are not sure of the path that allows entrance into the food chain. Earlier I addressed collaborative interaction with other agencies; a more graphic example could not be found than the issue at hand regarding food safety.

Actions have been taken and are ongoing to regulate waste discharges that could be sources of contamination that could potentially enter the food chain. The Central Coast Region has recently developed several TMDLs which focus on grazing activities, including the requirement for grazers to submit nutrient management plans. The Central Coast Board

is currently working on a TMDL specific to E-coli sources in the Salinas River watershed.

Some have expressed concerns over the use of recycled domestic water. This water requires at least tertiary treatment and has been determined by DHS and the Water Boards to be adequate in removing any threat for E-coli.

13. Please provide information on the irrigated agriculture polluted runoff programs that regulate manure application, and the programs that regulate the proximity of domestic animal production to spinach and other leafy green vegetable production areas that are in effect. Do you believe these programs are adequate? Would you recommend a reporting system on manure application similar to those on pesticide application in order to obtain a better understanding of the scope of the potential problem?

    The State Board has protocols for the land application of all bio-solids, which includes manure. These protocols address methods of application and waterway setbacks. The issue of potentially establishing manure application permits is quite honestly not at the top of my priority list. Until such time as current ag drainage coliform monitoring produces more conclusive results, I believe we should continue to analyze the data being gathered. I believe we should be mindful that in most settings there are well demonstrated water quality benefits from the proper application of manure, compost and green waste.

Sacramento-San Joaquin Delta

14. In light of these recent developments, how is the state board working with other state agencies to manage the Delta? What role will your board play in the short term? What is your view of how the Delta should be managed in the longer term?

    In previous responses I have addressed how the Water Boards collectively work with other agencies. Aside from working with the California Department of Fish and Game and other regulating agencies, in the case of the Delta our primary involvement is with the Bureau of Reclamation and the Department of Water Resources as regulated bodies.

In my opinion, the Delta is by far our most challenging issue. The various specific factors (i.e., flows, salinity, invasive species, climate change) negatively affecting the Delta are fairly well recognized. However, the synergies created by the interaction of these factors, and the composite which results, are far more difficult to analyze. In our updated Bay-Delta Plan dated December 2006, the Water Board and Staff, amongst other items, recognized four critical emerging issues affective the Delta:
(1) Pelagic organism decline, Climate change, Delta and Central Valley salinity, and San Joaquin River flows and salmon.

In retrospect, invasive species should have been a fifth item of concern. To respond to these emerging issues, the Water Board has conducted and scheduled workshops to receive additional information. January, 16 and 19, 2007 a workshop was held on South Delta Salinity; and March 22, 2007 a workshop was held on the Pelagic Organisms Decline. Testimony at these workshops from affected and interested parties included University, State and Federal officials. I will be particularly interested in the peer review of the POD in the hope that it will clarify several opinions that were somewhat vague.

In the short term, if there is adequate evidence to provide direction, the Board can consider water quality enforcement or water right actions. These could include CDOs, civil liability penalties, and possible injunctive relief in the courts.

It is becoming quite clear, as I look at long term strategies for the Delta, that in order to preserve the highest possible beneficial uses that it may be impossible to protect all the uses we know today. Unfortunately, many current studies deal with the current fresh water Delta model we now have. I feel it is safe to assume that one outcome of the Delta Vision process could be renewed interest in a Peripheral Canal. Additionally, the timetables associated with climate change are educated guesses at best. I would say, in conclusion, that a healthy Delta will require radical change from current policy and if this change is not close to perfect it will lead to environmental and economic chaos.

15. The Porter-Cologne Act provides authority for the board to protect the beneficial uses of water in the Delta. How is the board using this authority beyond setting salinity standards?

Most salinity objectives for the Delta are related to flow. The beneficial uses of water in the Delta are not protected through salinity management but by management of Delta outflows, establishing objectives for dissolved oxygen, and export pumping rates. Closure objectives for the Delta Cross Channel Gates is also a useful tool. Aside from salinity objectives, the State Board applies the California Toxics Rule to protect all beneficial uses of the Delta.

Groundwater

16. Do you think the state board should standardize the criteria various regional water boards have developed for use of recycled water for groundwater recharge, or should this be left to the regional boards? Are there reasons why different criteria would be needed when using recycled water to recharge groundwater?

    The State Board is in the process of developing a water recycling policy. I have addressed previously the need for Regional consideration on many issues. However, I would be hard pressed to justify special regional need as it pertains to recycled water for ground water recharge. The state currently operates under DHS recharge criteria, but this only deals with public health. If there are any valid reasons why a statewide recycled water for recharge policy would not be appropriate, I am not aware of them. State policy which is being developed will address other recharge impacts.

17. What specific steps should the state and regional boards take to protect and manage the state's groundwater beyond the current monitoring effort?

    I believe I am correct in saying that California law does not give the Water Boards the authority to manage ground water from a pumping and quanity perspective. In 2001 the State Legislature directed the State Board to develop statewide ground water monitoring (AB 599). The GAMA Program resulted from this legislation, as I discussed earlier. The program is working well, but continued funding is essential.

    Collectively, the Water Boards set water quality standards through Basin Plans to direct local governments to develop ground water management plans. Through Basin Plans, the Regional Boards set standards and water quality objectives. When implemented, basin plans include

issuance of WDRs for discharges to land (landfills, municipal and industrial treatment plants in addition to septic tanks). Cleanup and abatement programs provide funding (Grants and Loans) for the cleanup of unauthorized discharges to ground water. I had mentioned previously the Water Board's efforts to protect ground water quality through the underground petroleum tank program and others.

Coastal Waters

18. Should the state board and regional boards take action to reduce beach and coastal pollution?

I would not want to take this question out of context, but the fact is that the State and Regional boards have taken, and will continue to take, significant action to reduce coastal and beach pollution. When I was interviewed by the Governor prior to appointment, he made it clear that he expected a firm commitment from me (which he received) to be actively engaged in ocean and beach issues. Incidentally, he asked for an equally strong commitment to protect and monitor ground water. I believe the people of California deserve, and should expect, clean beaches and an unpolluted ocean.

Since coming to the Water Board, I have been very pleased with our staff interaction with Heal the Bay. The Water Board regularly utilizes the scientifically sound analysis in Heal the Bay's "Beach Report Card".

The Water Board is working closely with the Southern California Coastal Research Project to develop Rapid Indicators for pathogen monitoring. When fully available, the Rapid Indicator will provide monitoring data within several hours. Advances in monitoring will allow us to better protect public safety and to more accurately pinpoint pollution sources and types. It is not my intend to paraphrase verbage from existing policy description material, however, at this point I will be including information from Water Board files regarding ocean and beach pollution reduction efforts that are currently underway.

Ocean Standards

The 2005 California Ocean Plan is the State's water quality control plan for near-coastal ocean waters. The State Board is currently in the process of amending the Ocean Plan to address a variety of water quality issues, including discharger monitoring programs, including new monitoring

requirements for storm water and nonpoint sources, adding a new standard for fecal coliform bacteria in shellfish harvesting areas, controlling vessel discharges, controlling marine debris, a new standard to address desalination discharges, and updating/improving other existing components of our ocean standards. These amendments are targeted for Board consideration in 2008.

Sediment Quality Objectives in Bays and Estuaries

The State Water Board is leading the nation on developing sediment quality objectives for toxic substances. Sediment quality objectives for bays and estuaries are being developed now that include a scientifically defensible "multiple line of evidence" approach. These new standards will address direct effects on benthic aquatic life, addressing detrimental physiological responses in communities due to toxic pollutant concentrations. In addition indirect effects on human health and wildlife due to the bioaccumulation of pollutants in the aquatic food web will also be addressed. The first phase of these new standards is targeted for the end of 2007.

Coastal Power Plants, Once-through Cooling

Section 316(b) of the Clean Water Act states: "the location, design, construction, and capacity of cooling water intake structure [for a power plant] reflect the best technology available for minimizing adverse environmental impact." At issue is the entrainment and impingement of marine/estuarine aquatic life at once-through cooling intake structures, currently pumping over 16 billion gallons a day of coastal water. The State Water Board is currently working on a statewide policy to strictly control the impacts of once-through cooling at 21 coastal power-generating facilities, with a target date for completion by early 2008.

Rapid Indicators

Monitoring is a key ingredient to protecting our beaches. The State Water Board, working with the Southern California Coastal Water Research Project, leads the nation in the development of Rapid Indicators as an approach to monitoring for pathogen contamination of beaches. Once implemented this will provide results in hours rather than the using the current methods, which take a whole day to complete. Great progress is

being made in this emerging technology and the State Water Board and Ocean Protection Council are currently funding the final development of rapid indicators.

Vessel Discharges

Under the Clean water Act a state can have all or portions of its waters designated by USEPA as no-discharge zones (NDZs) for vessel sewage. There are currently ten NDZs in California's coastal waters, however the primary emphasis is on small vessels (e.g., recreational and fishing boats). Sewage discharges from cruise ships and other ocean going vessels obviously have a potentially much greater impact on the marine environment. Some cruise ships can carry up to 5,000 persons (crew and passengers) and generate as much as 100,000 gallons of wastewater per day. The State Water Board has formally requested the USEPA to create a NDZ for sewage discharges from ships anywhere in State waters (three nautical miles from shore). USEPA is currently considering our application.

Onsite Wastewater Regulations

In some areas, it has been estimated that as much as 30% of the total bacteriological loading to coastal waters is associated with onsite wastewater treatment systems (OWTS). The State Water Board is required to adopt regulations for OWTS pursuant to Section 13291 of the California Water Code. We believe that the OWTS regulations will be a step forward towards the elimination of pollution from these sources. The State Water Board has made the completion of this rulemaking effort one of its priorities. State Water Board staff has been publicly directed to move this process forward expeditiously.

Storm Water and Areas of Special Biological Significance (ASBS)

The National Pollutant Discharge Elimination System (NPDES) Storm Water Program is one way that we are working to reduce pollution in urban, industrial, construction, and highway runoff. One aspect of this program is the enforcement of the waste discharge prohibition in ASBS. The State Water Board designated 34 ASBS in the 1970s, and the Ocean Plan prohibits waste from being discharged to ASBS. Special protections for ASBS from storm water runoff are targeted for Board consideration in 2008. These special protections will require that waste discharges be limited by strict special conditions placed on storm water and nonpoint source runoff.

Clean Beach Initiative

In 1997, AB 411 (Chapter 765, Statutes of 1997) mandated that beaches with storm drains that discharge during dry weather and visited by more than 50,000 people per year be monitored at least weekly from April 1 through October 31. This is the responsibility of the local health officer or environmental health agency. Beginning in 1999, the California Department of Health Services (DHS) regulations implementing AB 411 required that local officials must post warning signs for beaches that exceed standards set by the DHS. Beaches suspected of being contaminated with sewage must be immediately closed until bacterial monitoring indicates the waters are safe for human contact. AB 1946 (Chapter 152, Statutes of 2000) requires local health officers to submit to the State Water Board, on a monthly basis, documentation of all beach postings and closures. Coastal monitoring and reporting generally exceeds AB 411 requirements, especially in southern California where weekly, or more frequent, monitoring occurs year-round.

19. Particularly in Southern California, stormwater runoff is the main source of beach pollution. Clear standards have helped reduce other point sources of pollution over the years significantly, and the state board's Blue Ribbon Panel found that numeric standards can be applied to construction and industrial stormwater pollution. Should the state board and regional boards act to further reduce waterway contamination from stormwater pollution in light of these findings? Do you support the establishment of numeric limits for stormwater pollution?

    Possibly at one time BMPs were effective tools to limit storm water runoff pollution. However, considering the number of impaired waters in California (2,100 +), something needs to change. Current BMP based permits by nature are difficult to enforce. It appears to me that action levels are good tools for measuring performances of BMPS. Exceeding action levels does not constitute a permit violation, but it does require mandatory follow-up action.

    Our Board recently directed the Los Angeles Regional Board to include Numeric Effluent Limits (NELs) on the Boeing Santa Susanna facility permit. I am sure many advocating the increased use of NELs felt this action was an indication of future permit criteria. I personally feel that the Boeing site was so grossly polluted that we had not choice other than to impose NELs.

If we are able to effectively incorporate the concept of Action Level-BMP approach it would definitely be less expensive and far less contentious. I would not be opposed to limited NELs in special situations, but I would honestly hope their use will be limited.

Enforcement

20. What steps have been taken by the state board to improve its enforcement program? Are there measurable and quantifiable improvements in the board's enforcement program?

    The State Water Board has created an Office of Enforcement, which is comprised of both legal and investigative staff. I am hopeful this move will greatly enhance our consistency in enforcement at both the Regional and State level. The Office of Enforcement is preparing a performance based management plan for 2007-2008.

21. How can the state board assist the regional boards in enforcing existing law and regulations?

    Legal staff in the Office of Enforcement work directly with Regional Board staff on enforcement matters. Although this process is new, it should definitely provide greater consistency throughout all the regions.

22. What steps has the state board taken to make enforcement information more accessible and understandable to the general public?

    Although not thoroughly refined, our CIWQS data system is providing the public with more readily available reports on violations and enforcement actions.

Water Rights

23. What steps are you taking to ensure the water rights program is adequately funded and staffed? Are there improvements to the program that can be made to ensure its goal and purposes are achieved, and water rights holders receive prompt decisions from the board?

    For 2006-2007, the Legislature has approved funding for six additional Water Board staff for the specific purpose of processing water right

applications. Staff informs me that by the beginning of 2009, the new staff will be hired and adequately trained. Their estimate is that by 2009 this staff augmentation should increase permit processing from the current level of + or – 100 to 130.

At best, the application process is time consuming just to meet the basic three steps which are required by law. First, the State Board must comply with CEQA. Second, the State Board must determine that the proposal will not adversely affect legal water users. Third, the State Board must consider the effects of the project on public trust and mitigate those effects if feasible. Additionally, if a permit is being issued, the State Board must ensure water is available for appropriation.

24. Should water rights activities be taken from the state board and moved to another agency where they can be handled separately from water quality programs?

I am not aware if this question has been frequently asked or not, but I can honestly say it is the first time I have heard it. My first reaction would be that the only other agency that could house Water Rights would be DWR, and that would create conflicts of interest far in excess of any advantage. I say this because DWR has many permits of their own, and probably need a few more.

More importantly, I see inseparable functions between water rights and water quality. Certainly water quality effects are a primary consideration in issuing or renewing water permits. The State Board was created as an independent board, in part to promote water quality and water right proceedings in an impartial and non conflicting manner. While little we do at the Water Board is perfect, I feel we are better off continuing to improve our existing programs than to consider separating interrelated functions.

1. **Please provide use with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board? How will you measure your success? Please be specific.**

   My tenure is only through January 15, 2007, so my goals have two parts – those immediate few that it may be possible to achieve in that time frame, and those that I am pursuing under the assumption I will be re-nominated and reconfirmed in 2008.

   In the short term, my goals are:

   - Adoption of an effective stormwater construction permit,
   - Issuance of an effective draft stormwater industrial permit,
   - Adoption of a recycled water policy if the policy can be constructed in such a way that environmental review can be completed in 2007 (that is, if the equivalent of a mitigated negative declaration for the policy is possible),
   - Adoption of a parallel policy for aquifer storage and recovery projects that involve water sources other than recycled water,
   - Adoption of a compliance schedule policy that supercedes all nine basin plans to create appropriate uniformity for the conditions under which NPDES permit compliance schedules will be granted, again if environmental review requirements do not make achievement of this goal impossible in 2007 (the staff preliminary assessment is that the policy can be finalized in 2007),
   - Completion of an economic analysis, in collaboration with the California Energy Commission, to estimate the feed-in tariff that would be required for electricity or pipeline quality gas produced from dairy digesters, in order to induce widespread investment in digesters and an associated set of "fully protective" water and air quality features (e.g., double liners, nitrogen management, etc.).
   - Completion of a white paper on the impact of low impact development measures on property values. If such measures increase property values, they will be easier for local land use authorities to support.
   - Lay the foundation for significant improvements in Water Board efficiency and effectiveness, without a reduction in due process for stakeholders, via our strategic planning process and "re-engineering" of our management team and structure. I fully support Chair Doduc's efforts to create a performance-based management structure within the Water Boards. I was present for the entire State Board stakeholder strategic plan listening session in March 2007 and plan to be fully engaged as our strategic planning process unfolds. In my role as vice-chair of the board I will be working with our new management team to administratively "re-engineer" state board operations. There are many actions that can be taken administratively to improve efficiency without reducing due process for stakeholders. These include actions to reduce friction and redundancy between state and regional boards (e.g., policy development teams); and greater clarity in plans, policies, permits, and waivers (which simplifies and reduces the effort

required to implement plans or policies and to enforce permits or waivers). My answer to question 2, below, provides more ideas about "re-engineering."

- Create statewide recognition and respect for my competence and even-handedness as a board member.

Success or failure at achieving the first seven bulleted goals can be measured directly. Success or failure with regard to the eighth and ninth bulleted goals is more difficult to assess. Being re-nominated and reconfirmed in 2008 would be a strong indication that I have succeeded at achieving these last two goals. Another strong indication of success would be (admittedly subjective) statements by senior staff or stakeholders to the effect that I am succeeding in these areas.

In the long term, I have one over-riding goal: to protect and restore the water environment of California in ways that also have economic and social benefits. I've chosen this goal because it addresses the most pressing problem and challenge facing the State and Regional Water Boards in the coming years. That problem is how we are to sustain and restore the beneficial functions of natural systems while population doubles or triples and the state economy continues to grow. All other factors equal, these population and economic trends will worsen environmental quality. We face increasingly difficult problems such as emerging pollutants, water scarcity, and rising quantities of conventional pollutants if pollution per capita or per dollar of economic activity were to stay constant. We also increasingly face problems that involve overlap or even conflict between regulatory agencies, such as those associated with urban runoff quality and land use.

The best way to counter these trends is to build public support for water quality protection and restoration by finding – among the possible solutions to our conventional regulatory problems – solutions that also create other benefits. Many of the most effective policies will involve working across traditional boundaries such as those that separate water, air, energy, and pesticide regulators within state government. Success will require innovative thinking and a willingness to try out new policies in pilot projects.

I will help build consensus around detailed policies that implement the vision of simultaneous environmental, economic, and social progress. Environmental regulation is not only about environmental protection, it is also about wealth and wealth creation, broadly defined. Money and property are forms of wealth, but so are human health and rivers that are full of life. The State Board needs to take the long and broad view while responding as necessary to immediate mandates and crises. It needs to patiently develop policies that are simultaneously good for the environment, the economy, and people. This includes both win-win and lowest-cost-of compliance approaches (e.g., watershed level cap and trade programs). It includes actions like our Clean Beaches Initiative, which has economic and public health benefits, as well as environmental benefits, and other potential actions such as the following examples.

We are currently discharging more pollutants in California than natural systems can assimilate. That is why there are over 2100 impaired waters in the state and more

than 400 federally mandated TMDL actions being undertaken to address them. We cannot address this problem in the long term through end-of-pipe treatment and conventional, discharger-by-discharger, pollutant-by-pollutant, regulation. We need to systematically encourage, require and reward cleaner industrial, agricultural, and urban land-use practices. We also need to invest bond monies in ways that restore ecosystems in places and ways that increase the ability of California's natural systems to assimilate pollutants without harm.

A second example is so-called low-impact development (grass-lined swales, biofilters in parking lots, etc) as a method for improving urban runoff quality. This approach potentially offers lower system-wide costs after accounting for: 1) reduced spending on downstream flood control because peak flows are reduced and/ or 2) the water supply benefits of recharging aquifers, when applicable. It may also increase the desirability of neighborhoods and property values, thereby rewarding local communities that promote this approach.

A third example is the water quality/water supply reliability 'nexus.' As population and the economy grow, and climate change alters patterns of snowmelt, even modestly dry years will cause water scarcity for more stakeholders than in the past. But we can increase the reliability of critical water deliveries during dry years; an increase that economic research tells us has very high value for water customers. A few examples of possible efforts by the Water Boards that would enhance water supply reliability and perhaps create economic and social 'co-benefits' along with the usual water quality benefits, include:

- Streamlining regulations affecting water reuse and recycling, including our definitions of best management practices on farms and in urban runoff, and our direct regulation of influent and effluent associated with treatment of wastewater, brackish or polluted groundwater, and seawater.

- Crafting groundwater cleanup rules that encourage beneficial use of treated water whenever feasible.

- Developing a policy to support investment in rural communities (not just mitigation of harm), if farmers choose to temporarily transfer water to Cities or the environment during dry years. Often these communities are lower-income and water transfers raise important social equity and environmental justice issues.

- Supporting and encouraging water diverters to take water further downstream when doing so would create environmental benefits from in-stream flows between the old and new points of diversion. This is an essential component of the proposed solution to a water rights dispute on the Yuba River, which reportedly has very wide support from stakeholders, and seems also to be a component of San Joaquin River restoration plans.

Finally, it is worth noting that the internal performance of the Water Board system can and should be improved in the long term, and that such improvement is essential to achievement of all of the external performance goals described above. My answer to question 2, below, provides more detail about our "re-engineering efforts."

2. What is your view of the role the state board should play in relation to the regional boards?

The State Water Board's role is to set statewide water quality policy consistent with the Porter-Cologne Water Quality Control Act (the Act). After setting policy, the State Water Board's role is to oversee the Regional Water Boards to help them follow the Act in a way that is consistent with statewide policy. A large part of the State Water Board's responsibility in this regard is to provide appropriate guidance to the Regional Water Boards. This guidance comes through amendments to formally adopted policies, water quality coordinating committee meetings, coordinated staff training, staff roundtables on specific subjects, and where necessary, review of Regional Water Board actions through the petition process.

The appropriate amount of decentralization depends on the information available at each level of the bureaucracy. If the same information were available to everyone, we could centralize everything. But 'locals' know more about their circumstances than people located far away, so hierarchies like the federal/ state/ local system of government have developed that encourage decision-making at the lowest effective spatial level. The same principle applies to the Water Board system. Too much centralization can be ineffective or excessively costly because vital information will be lost. Too much decentralization can be ineffective or costly because parties who operate in more than one region may face different, possibly conflicting rules, and at the least will have to operate their businesses under multiple rather than one set of rules.

A strength of the Water Board system is its flexibility to use information available at the regional and local level to address regional and local issues, a strength that would be lost if the system were fully centralized. However, some stakeholders express a valid concern about consistency in water quality regulation throughout the state. An important role for the State Water Board is to help foster consistency. If different Regional Water Boards' approaches to water quality regulation are creating significant inequities in the regulated community, the State Water Board should consider and, where appropriate, address those inconsistencies. The State Water Board may find it necessary to adopt specific state policy to bring about consistency. Alternatively, it may adjust the actions of a particular Regional Water Board through the petition review process.

Consistency does not, however, require that every Regional Water Board take the exact same approach to a water quality problem. Nor is consistency necessarily important when a regulated party or class of parties operates in only one or a few regions. Regions may serve as incubators to test different approaches to solving water quality problems. For example, the farm waiver program is being implemented differently in at least four regions, and this is potentially helpful as the state struggles to effectively and efficiently regulate farm runoff. So long as these approaches are consistent with overarching policy and do not place disproportionate burdens on persons or companies working in more than one region, there is no harm. The State Water Board needs to encourage innovative problem solving. If necessary or appropriate at a later time, the State Water Board can require a particularly successful approach to become the statewide standard.

Do you believe the state board should play a greater role in coordinating policies among the regional boards to ensure consistency among regional boards and accountability for water quality programs?

Yes. The relationship between State and Regional Water Boards described above is difficult to manage effectively. In part this is because there is a strong cultural divide between regional and state boards that has existed for many decades.

I believe that the internal management structure of the Water Boards needs to be strengthened. That is why I have supported administrative "re-engineering" since joining the board. It is my understanding that the State Board has not taken the approach described below, in the past.

That approach has two parts. First, the state board should more strongly and clearly delineate policies when statewide interests are at stake (e.g., water recycling, compliance schedules, etc). Most existing state board policies are too long and ambiguous to provide clear guidance to the regions when a statewide interest exists. I think our policies should be considerably more concise and unambiguous. Second, I believe we should be deferential to regional boards whenever statewide interests are not at stake, even when a state board member might disagree with the decision that was made.

My prior experience as a regional board member and staff member suggests that both regional boards and their staff will appreciate and support a clearer division of labor along these lines.

If so, what specific additional activities do you think that the state board should undertake?

Some ideas that have been proposed, but which would probably require legislative and gubernatorial approval, are: 1) have the Regional Water Board executive officers report directly to the State Water Board's executive director with respect to a pre-specified list of administrative (NOT policy) duties, and 2) substantially involve the State Water Board executive director in performance reviews of the regional executive officers. Creating a direct administrative (but NOT policy) line of responsibility to the State Water Board's executive director would enhance accountability of the staff. Partially centralizing performance evaluations would help to create a stronger senior management team and ensure that performance expectations are uniform throughout the system. I support these ideas, so long as Regional Board members are consulted and have ultimate authority over hiring and firing decisions.

There are many actions that can be taken administratively to improve regional/state relationships and effectiveness without reducing due process for stakeholders. I fully support Chair Doduc's efforts to create a performance-based management structure within the Water Boards. I was present for the entire State Board stakeholder strategic plan listening session in March 2007 and plan to be as fully engaged as my schedule will allow as our strategic planning process unfolds. It is my understanding that this is the first state board strategic planning process to formally include the regional boards and regional stakeholders.

In my role as vice-chair of the board I will be working with our new management team to administratively "re-engineer" state board operations. We need to reduce friction and redundancy between state and regional boards through, for example, policy development teams; and we need to promote greater clarity in plans, policies, permits, and waivers, because doing so simplifies and reduces the effort required to implement plans or policies and to enforce permits or waivers. We are also considering consolidating all state board functions that involve substantial region-relevant, non-administrative functions under our newly hired chief deputy director for water quality (a former regional board executive officer), and restructuring our management coordinating committee (MCC) and perhaps other region/state committees, to reduce redundancy and increase effectiveness.

Finally, I believe a statewide water data and science "institute" might help to simplify, streamline, and improve our decision processes. We often hear, especially when TMDLs are brought to the State Board after Regional Board approval, that the scientific basis of the Regional Board action was not strong enough. Two regional organizations (SFEI and SCCWRP) – the former in the San Francisco Bay area and the latter in the San Diego/Santa Ana/Los Angeles area – have greatly helped to address these scientific concerns via regional monitoring and regional scientific studies. A mix of state and stakeholder funding supports both organizations. A similar statewide effort, perhaps coordinated with efforts of the Department of Water Resources and other water stakeholders, might help to strengthen regional/ state consistency and accountability, and help to alleviate state budget constraints.

3. **How often do you visit the regional boards where you are a liaison? What do you do as a liaison with that regional board?**

I am the liaison to the San Francisco and Central Coast regional boards. Ideally, I would attend the monthly meetings every month. Due to scheduling difficulties, created in part by State Board staff, I have not been able to do so. However, when I have attended I have observed much or all of the meeting, although state board liaisons have traditionally made a progress report at the start of the regional board meeting, then left. In addition, I "attended" the March Central Coast Board meeting by phone, an innovative approach to overcoming the scheduling difficulties I've experienced. I have committed to that board to attend by phone whenever I cannot attend in person. I also intend to ask our office of information technology if a video link could be created for this purpose.

Although not required, I view my role as liaison as including meetings with regional staff to discuss issues that concern them, and I have done that on several occasions. Most recently, I met with San Francisco Bay and North Coast regional staff on the topic of wetland, riparian, and stream policy, where a state board policy has recently "morphed" from a draft that overlapped in a minor way with a two-year policy effort in those regions, into a policy that the regions are concerned will disregard two years of regional-level work. Although I believe regional concerns can be addressed, the meeting was productive and helpful. In particular, it illustrated the dysfunctional history between the regional and state boards, a problem that our re-engineering effort is intended to solve.

I have also attended stakeholder meetings at the regional level, most often in the San Francisco Bay Region since the scheduling constraints are less difficult to

overcome. Meetings on the mercury TMDL and the mercury offset policy have been helpful, as have meetings on stormwater and related topics (e.g., low-impact development techniques, state board grants to support stormwater compliance, etc.).

Finally, I have been available by telephone and e-mail to assist the regions with issues of concern at the state board. These have most prominently included concerns from the central coast board in the area of food safety and surface water monitoring.

4. **Are there specific steps you think the state board should take to better coordinate water quality programs with related programs at the Department of Fish and Game, the Department of Toxic Substances Control, the Department of Water Resources and other state and regional water agencies?**

Our staff already coordinates their activities with other agencies. A summary of those efforts, prepared by staff, is provided below.

However, I also believe that my long-term goal described above requires participation by board members in cross-agency, cross-media, and watershed-scale coordination efforts. To that end, each board member is designated as a liaison with other agencies. I am the liaison to the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), and the California Integrated Waste Management Board (CIWMB). I have met with members of those boards and commissions to better understand the opportunities for collaboration. I have also attended several meetings of the inter-agency bio-energy working group sponsored by the CEC and several workshops sponsored by the CPUC on water-energy issues in general, and on water quality-water supply issues for small communities. With CEC Commissioner Boyd's support, we have developed a joint CEC-State Board study of the economics associated with dairy digesters described in my short-term goals, above. I have also kept the California Department of Food and Agriculture stewardship program and the dairy industry group (CARES) informed about the study as it proceeds. Finally, I have investigated the possibility of more closely coordinating Water Board and CIWMB regulatory activities for greenwaste composting sites.

It is worth noting that the stakeholders at the strategic planning summit were particularly supportive of watershed-level regulatory activities rather than parcel-by-parcel regulations, especially in the area of stormwater management. For example, some builders have pointed out that regulation of hydromodification at new construction projects, if not coordinated with regulation of hydromodifications that took place historically and that could be reversed, may lead to investment patterns that get much less "bang for the buck" than would be obtained from a more comprehensive, watershed-scale approach to regulation of hydromodification. I have actively supported this approach. It is difficult to implement, however. We need to be creative, and perhaps implement some pilot projects, as I stated in the discussion of my long-term goal, above.

Examples of coordination efforts at the staff level include:

- For the State Water Plan (Bulletin 160) update, the State Water Board is working closely with the Department of Water Resources (DWR) to ensure that water

quality considerations are incorporated into the State's Water Plan and that the plan is consistent with the Regional Boards' Basin Plans. The Director of DWR invited the State Water Board to participate on the State Water Plans Steering Committee and the State Water Board's Acting Executive Director named the Deputy Director of Water Quality to participate on behalf of the Board. Also to facilitate this coordination, the Governor's budget proposes an augmentation of $3.2 million and 10.9 PYs to incorporate the State Water board's water quality basin plans into the next update of the California water plan. California's Water Basin Plans assess regional water quality and water supply and act as guiding documents for the expenditure of Regional Water Management funding. The State Water Board reports that many of California's regional Water Basin Plans are out of date with many standards not having been revised since their original development 35 years ago.

- For regulation of discharges from irrigated agricultural lands:
  - the State and Regional Boards coordinate with the Department of Pesticide Regulation, Department of Food and Agriculture, county agricultural commissioners, U.C. Davis Extension agricultural advisors, and the U.S Soil Conservation Service.
  - The State Water Board and the Central Valley Water Board have established a pilot program with Glenn and Butte Counties that assigns roles for overseeing grower implementation of the Central Valley Water Board conditional waivers for discharges from irrigated lands. This pilot program is working well and we'll evaluate it for possible expansion to other counties.
  - The State Water Board and the Department of Pesticide Regulation have an MOU that describes how the agencies will coordinate their activities.

- The State Board is assisting the Department of Pesticide Regulation (DPR) in advancing a Statewide Urban Pest Management Strategy.

- For recycled water, the Regional Water Boards coordinate with County Health Departments and the Department of Health Services to issue water reclamation requirements.

- For the application of soil amendments such as compost, manure, green waste and biosolids, the State Water Board coordinates with the Integrated Waste Management Board.

- For contaminant site cleanup:
  - The State and Regional Boards entered into a Memorandum of Agreement (MOA) with DTSC that establishes a protocol for determining whether DTSC or the Water Boards should take the lead for new brownfields sites entering the cleanup process. Coordination with DTSC through MOA is working well.
  - The Water Boards receive funding from the Department of Defense through an agreement with DTSC to oversee cleanup at DoD facilities, a shared responsibility with DTSC. Coordination with DTSC on the cleanup of DoD facilities continues to work well. The State Water Board also funds and coordinates with the Department of Fish and Game to evaluative biological impacts of contamination at DoD facilities.

- For petroleum underground storage tank cleanups the State Water Board funds and coordinates with twenty county Local Oversight Program (LOP) agencies in the regulatory oversight of the cleanup of over 6,000 Underground Storage Tank (UST) sites. The State Water Board coordinates extensively with 100 CUPAs (Certified Unified Program Agencies) in the underground storage tank leak prevention program. Additionally, the State Board funds OEHHA to review risk assessments for UST and non-UST sites.
- For non-UST site cleanups the State and Regional Boards coordinate cleanup activities at many sites with DTSC. Additionally, the Water Boards and DTSC have jointly prepared "uniform site assessment" tools to ensure that all contaminant site assessments are thorough and consider all contaminant pathways.
- For abandoned mines, the Water Boards are working with the US Forest Service, USEPA, Department of Conservation, DTSC and others to identify and prioritize those abandoned mines that are impacting the environment so that funding and regulatory activities can be better coordinated.

- For regulation of disposal of waste:
  - For the regulation of those RCRA hazardous waste sites that Water Boards have regulatory responsibility, Water Boards coordinate monitoring and corrective action activities with DTSC.
  - The Water Boards coordinate with DTSC and the California Integrated Waste Management Board (CIWMB). CIWMB in the management of special wastes e.g., lead waste, treated wood waste.
  - For regulation of non-hazardous solid waste landfills, the Water Boards established joint regulations with the California Integrated Waste Management Board and continue to coordinate on a variety of issues including closure and post-closure activities, financial responsibility for the closure of landfills, landfill gas management. In addition, the State Water Board has worked with DTSC and CIWMB to develop protocols to be utilized by the CIWMB and local enforcement agencies for site investigation and site characterization of hazardous substances at burn dump sites.
  - For green waste composting facilities, the Water Boards are working with CIWMB to develop a general order for regulating such facilities.
  - For policy and regulation regarding the application of soil amendments such as compost, manure, green waste and biosolids, the State Water Board coordinates with CIWMB.

- For addressing emergent contaminants including perchlorate, the State Board hosts a monthly roundtable with active participation of USEPA, DTSC, OEHHA, DHS, CDFA and all the Regional Boards to share information, regulatory strategies, remediation technology, etc

- For addressing the impacts of new fuel formulations on water quality (think MTBE) State Board staff are active participants in a multi-media working group lead by ARB to ensure that all environmental impacts of for new motor fuel formulations are evaluated. Recommendations of the multi-media working group are reviewed by the Environmental Policy Council which is chaired by the Cal/EPA Secretary.

- For implementing the State Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, staff coordinates with DTSC, DHS, DPR, CDFA, USGS, Lawrence Livermore Laboratory, etc.

- For implementing the Surface Water Ambient Monitoring Program (SWAMP) and the requirements of SB 1070 (Ch. 750, Stats. 2006):

    - The State Water Board is working in concert with Cal/EPA and the Resources Agency to establish the California Monitoring Council. Among other things, this Council is required to review existing water quality monitoring, assessment, and reporting efforts of over 20 Boards, Departments, and Offices, and to recommend specific actions and funding needs necessary to coordinate and enhance those efforts.
    - There are several different types of water quality monitoring data collected in programs administered by state and federal agencies. These include ambient, regulatory compliance, research, and project effectiveness. Both agencies (Cal/EPA and Resources) are current involved in monitoring activities that can serve as models in meeting our SB 1070 obligations. There already exist a level of coordination and integration in data sharing between the Surface Water Ambient Monitoring Program (SWAMP) and the California Environmental Data Exchange Network (CEDEN). SB 1070 provides an opportunity for us to move coordination on the collection and reporting of water quality data, and environmental protection forward in California.

- For Wetland and Stream Protection:

    - The State and Regional Water Boards coordinate with the Department of Fish and Game (DFG). Coordination for protecting riparian areas, wetlands, and endangered species is especially relevant for Water Board water quality certification and permitting actions and DFG Streambed Alteration permits and endangered species consultations. State Water Board staff is currently working with the DFG's Habitat Conservation Planning Branch to develop a framework for regulatory coordination. The framework includes:
        - Permit "cross-notifications
        - Compliance Assistance Networking
        - Wetland and Riparian Area Protection Policy Review

- For atmospheric deposition of contaminants, the State and regional boards are working with the Air Resources Board and the local air quality management districts to identify airborne sources of pollution and what can be done to prevent the water pollution that can ensue.

- The State Water Board is a member Southern California Coastal Waters Research Authority (SCCWRP) which is formed by a Joint Powers Agreement between the southern California coastal dischargers; Regional Water Board's 4, 8 and 9; and of course the State Water Board. SCCWRP coordinates the southern California Bight ocean monitoring program (*the Southern California Bight is the 300 km of recessed coastline between Point Conception in Santa Barbara County and Cabo Colnett, south of Ensenada, Mexico)* and provides

invaluable research into new monitoring technologies such as rapid indicator test for beach contamination. SCCWRP illustrates direct coordination between dischargers and the Water Boards.

- The State Water Board was a founding member of the California Financing Coordinating Committee (CFCC). The CFCC is a collaborative effort between us and the Department of Water Resources, the Department of Health Services, the California Infrastructure and Economic Development Bank, the Department of Housing and Community Development, and the U.S. Department of Agriculture Rural Development. CFCC organizations work together to provide outreach to small communities regarding the financial assistance programs that all of the member agencies provide. CFCC holds Funding Fairs throughout rural California annually to reach these small communities and take our funding assistance directly to them. This effort has been well received and provides small communities with a method of submitting a single application for funding assistance that all the CFCC participants then evaluate and respond back. This eliminates the need for small communities to apply to multiple agencies for financial assistance.

5. **Accountability to the public is critical to ensure continued confidence in the state and regional boards' performance in protecting the quality of the state's waters. Are there specific steps you recommend that the state and regional boards can take to improve accountability and transparency to the public?**

Our strategic planning and re-engineering efforts are intended to address these concerns. I expect numerous good ideas to emerge from those processes. At present, the primary means of improving accountability and transparency are the creation of performance measures for ourselves and the regulated community that can be tracked over time; greater clarify in plans, policies, permits, and waivers, so that they are easier to understand and it is easier to hold permittees accountable; and improvements to our water quality data base (CIWQS), so that any member of the public can get compliance or enforcement reports on individual facilities, industries, regions, or the state as a whole, without undue effort.

It should be noted that our current processes include significant efforts to ensure accountability and transparency. I can provide a lengthy discussion of those processes, prepared by our staff, upon request. Public workshops are routinely held on controversial topics, draft permits and policies are circulated for public review, staff and board members meet with interested parties, decisions are made based on public rather than private discussions pursuant to the provisions of the Bagley-Keene Act, and so forth. Although improvements are necessary, especially with regard to accountability, the Water Board system is reasonably accountable and transparent at present.

There is also a tension between accountability and independence that the Porter-Cologne Act acknowledges and attempts to manage. Water Board members are accountable to the public because their decisions take place in a public setting, and voting records are open to public review. But they are protected to some extent from political pressure and 'accountability' because such protection is

necessary for sound, long-term decision-making. Indeed one of the most interesting comments made at the recent strategic planning stakeholder summit was that the Water Board system has become more political in recent years, and that our strategic plan should attempt to reverse that trend. This comment was made by the 'business table,' but seemed to be supported by many of the 100+ persons in the room.

6. **Do you believe the board can fulfill its mission adequately with funding that is so far below what is needed to do the job?**

I haven't seen or read the Water Board workplans that form the basis for this question. I apologize for not reading them in the time between receipt of this questionnaire and the date for submittal of an answer. Previously scheduled family plans and several "must-do" workshops and meetings took up most of that relatively short time frame. I am willing to report back to the committee at a future time on this topic.

With respect to water quality programs, it may be possible to address our needs through greater efficiency in the use of existing resources. I am reluctant to assume that those needs require more staff resources until I've reviewed the work plans in detail, and understand how work projections for all existing and anticipated programs are being made. For example, do the projections assume that the underground tank program, which employs more than 25% of our staff, will continue to require the current level of staffing for the indefinite future? Are estimates of TMDLs produced per full-time equivalent based on past performance, or an updated and more accurate estimate of performance now that the TMDL program is maturing?

I believe, however, that our surface water ambient monitoring program (SWAMP) is under-funded, and that this funding gap is a serious obstacle to achievement of our mission. The under funding is not primarily a staffing issue, but is more an issue of inadequate contract money for sampling, analysis, quality control, and data entry to our CIWQS system. Sound science cannot exist without sound data, and sound data often do not exist because we do not have a secure and stable source of funding for SWAMP.

I also believe that our water rights group is under staffed. I discuss this issue in more detail in my response to question 23. However, it is worth noting that we currently have only 50 staff in the water rights group, out of a total staff of over 1600.

7. **How does the board prioritize activities given it does not have sufficient funding to carry out its core regulatory programs?**

As stated above, I am uncertain about the underlying premise of the question. However, as an economist, I recognize that prioritization is critically important at any resource level. Staff reports that they prioritize on the basis of at least the following considerations: statutory/regulatory requirements, threat to water quality, compliance history, and complaints and other external circumstances. *I am not satisfied that we are prioritizing effectively.* The strategic planning and re-engineering processes that are underway should help greatly in this regard.

8. **What role does the state board play in monitoring and advising the regional boards about the requirements in law and the process to be followed for regulating polluted runoff?**

The State Board monitors and advises the regional boards about the requirements in law and the process to be followed for regulating polluted runoff and other activities, through a variety of means. Attorneys from the Office of Chief Counsel advise each regional board. The management coordinating committee, composed of regional board executive officers and State Board executive management, meets regularly (often monthly). A similar meeting among assistant executive officers occurs, and 'roundtables' among regional and state staff working on particular issues (e.g. TMDLs, stormwater permits) also meet periodically. *I am not satisfied that these meetings are achieving their stated purpose, and have asked our new executive director to review the situation.*

State and Regional Board staffs also develop yearly program workplans that identify program budgets, goals and milestones of achievement. State Board staff monitor these workplans.

The State Board develops statewide policy guidance documents to advise and assist regional boards in the proper implementation of water quality programs. There are numerous such policies. *I am not satisfied that the policies are clear and simple enough to achieve their stated purposes.* I will be asking our new senior management team to develop a checklist to be used by attorneys assigned to the regions, or regional executive officers, to determine both whether each action of a region complies with all applicable state board policies, and when such policies are ambiguous and need improvement from the regional perspective.

The State Board also reviews appeals of regional board actions, including those related to polluted runoff or storm water/urban runoff. State Board rulings on petitions provide advice and guidance to the Regional Boards. The State Board can and has also taken up matters on its own motion when it wants to address an issue that has been petitioned.

Should the state board help the regions address under-regulated polluted runoff?

Yes, of course.[1] However, given the magnitude of non-point source pollution problems, we need to do better, as discussed below.

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[1] A few examples of existing efforts are: 1) The State Board's nonpoint source implementation policy provides Regional Boards with a framework for decision-making, and enforcement authority, to address all sources of polluted runoff, 2) State and Regional Board staff has recently initiated a combined effort to assess and address the impacts of runoff from grazing operations, 3) State Board staff is assisting Central Valley Regional Board staff in addressing water quality impacts from dairies in the region, 4) The State Board works with Regional Boards to develop program budgets; and to provide information and training to better regulate polluted runoff, including voluntary cooperation of the dischargers and other stakeholders

What specific steps have been taken by the state board to address urban runoff or polluted runoff from sources like the application of pesticide or fertilizer?

Expanding urban populations have increased urban pest management activities, including urban pesticide use. Many California urban creeks have been impaired, some with sediment toxicity to aquatic life caused by commonly used domestic lawn, garden, and structural use pesticides. Regional Boards are in the process of developing TMDLs to restore the water quality of urban creeks, and the State Board reviews and approves (including the possibility of remands or amendments) TMDLs before they become effective. For example, in November, 2006, the State Board approved a TMDL for Diazinon and Pesticide-Related Toxicity in Bay Area Urban Creeks.

The State Board has also funded the Urban Pesticide Pollution Prevention (UP3) Project to prevent water pollution from urban pesticide use. State Board staff actively participates in the Urban Pesticides Committee of the UP3 Project, which is a network of more than 150 agencies, nonprofits, industry and other stakeholders working to solve water quality problems from urban pesticide use.

The State Board has funded the "Erase the Waste Campaign," that included information regarding the household use of fertilizers and pesticides.

The State Board is assisting the Department of Pesticide Regulation (DPR) in advancing a Statewide Urban Pest Management Strategy.

The State Board has a Management Agency Agreement (MAA) with DPR that mutually implements the California Pesticide Management Plan for water quality. Pursuant to the MAA, State and Regional Board staffs are collaborating with DPR to reevaluate the use of synthetic pyrethroid insecticides in California based on their aquatic toxicity. This is a particular important effort since it is the first time that DPR has actively solicited significant input from the Water Board system, at the regional level, on registration decisions. The Department's Director deserves special recognition for strongly supporting this collaboration.

Education and outreach efforts at the regional level, which are the primary means of compliance by stormwater agencies attempting to reduce urban pesticide impacts, may be greatly strengthened via this collaboration. For example, stormwater agencies need to know which pesticides, when used in accordance with their label instructions, pose little or no risk to water quality. They cannot require studies to document this issue; but DPR can as part of its re-registration evaluation and decision-making process.

State Board staff has also been engaged in discussions with DPR on requiring the registrants of pesticides to provide readily used analytical methods to detect these chemicals in water at environmentally relevant concentrations that lead to aquatic toxicity.

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via watershed groups, and 5) The State Board approves grant funding for non-point source pollution control efforts and scientific studies.

9. **Do you support additional steps to reduce surface water contamination by dischargers of polluted runoff such as irrigated agriculture, grazing, confined animal facilities, and timber operations? What about groundwater contamination?**

Yes. The next steps are unclear, however, given that our monitoring efforts are under-funded and that the current regulatory framework for non-point source pollution is extremely complicated.

On this latter point, *I recently asked staff to identify the regulatory mechanisms for a wide range of non-point source pollutants*, including waivers and 'gaps' in regulatory coverage. These mechanisms presumably implement our 2004 statewide non-point source policy. The tabular summary presented below resulted from that request. It shows large variation in regulation across regions.

The summary is an excellent starting point for an internal state/regional discussion of 'appropriate and inappropriate consistency' between regions in the area of stormwater regulation. Staff has agreed, subject to Board approval, to initiate that conversation. Regional staff will be invited to comment on whether current practices or the state non-point source policy should be changed. Next steps with regard to irrigated agriculture, grazing, confined animal facilities, timber harvest, and so forth, should emerge from that discussion.

Tabular Summary of Existing Waiver Types/Categories by Region (a)

Waiver Type/Category	Regional Board								
	1	2	3	4	5	6	7	8	9
Agriculture									
Grazing and Range Land Operations	O	O				O			
Irrigation Return Water	X**	X	XY	Y	XY	O	X**	O	XY
Small Composting Operations	O	O	O	O	X	O	O	O	XY
Small Animal Waste Disposal Facilities and/or Small Confined Animal Feeding Operations	XY	XY	O	O	X**	X	O	O	XY
Fertilizer and Pesticide Facilities	O	O	X**	O	X**	O	O	O	O
Pesticide Rinsewater Disposal Operations	XY	X	X**	O	X**	O	O	O	O
Small Food Processing Waste Disposal Operations	XY	X**	X**	O	XY	O	O	O	O
Industrial and Food Processing Wastes Used for Soil Amendment	XY	O	O	O	XY	O	X**	O	O
Small Agricultural Waste Disposal Operations Including Crop Residue	O	O	O	O	O	O	O	O	XY
Commodity Wastes	XY	X**	X**	O	XY	O	XY	O	O
Winery Operations	Y	X	**	O	Y	O	O	O	O
Stormwater									
Stormwater Runoff	X**	X**	X**	**	X**	X**	**	**	X**

Sewage									
Individual On-Site Domestic Sewage Systems (Septic Systems)	XY	X**	X**	XY	XY	X**	X**	XY	XY
Individual On-Site Commercial Sewage Systems	XY	X**	X**	O	X**	X**	X**	XY	XY
Individual On-Site Industrial Sewage Systems	XY	X**	X**	O	X**	X**	X**	XY	XY
Small Multi-User On-Site Sewage Systems		X**	X**	O	X**	X**	X**	XY	XY
Minor Sewage Sludge Application/Disposal Projects	O	O	X**	O	X**	O	O	O	O
Wells/Boring Waste									
Water Well Development Discharge	XY	O	XY	O	Y	O	O	**	O
Monitoring Well Development Discharge	XY	O	XY	O	O	O	O	**	O
Monitoring Well Purge Water Discharge	XY	O	XY	O	O	O	O	X**	O
Well Drilling/Testing	X**	X**	XY	O	X**	X**	XY	**	XY
Geothermal Well Drilling/Testing	O	O	O	O	O	X**	O	O	O
Injection Wells	O	X	XY	O		X**	O	O	O
Drill Cutting Disposal	O	O	O	O	O	O	O	XY	O
Small Drilling Mud Disposal Operations	XY	X**	XY	X**	XY	X**	O	O	XY
"Clear Water" Discharges									
Water Main/ Storage Tank/ Hydrant Flushing	XY	O	O	O	O	X**	O	X**	X
Pipelines/Tank Hydrostatic Testing Discharge	XY	O	O	O	O	X**	O	X**	**
Swimming Pool Discharge	XY	X	XY	X**	XY	XY	XY	XY	XY

X = Waiver category pre-SB 390
Y= Waiver renewed post- SB 390
**** = Yellow is preSB390 waiver covered in a TMDL implementation plan. Coverage is for a very limited geographical area.**
** = Discharge category covered by a separate conditional waiver, conditional prohibition, Statewide GO, RB GO, Stormwater Permit, 401, WDR, NPDES, delegated to other agency, or a catch-all category.
Red shading indicates discharge is not covered. RB may regulate per TMDL implementation.
O = Gray shading indicate discharge category is assessed on a case by case basis.
Green shading indicates category covered by statewide General WDR for Low Threat Discharges Order 2003-003

Tabular Summary of Waivers, Continued

Waiver Type/Category	Regional Board								
	1	2	3	4	5	6	7	8	9
Mining/Excavation/Construction									
Suction Dredging	X	X	X	X	X	X	X	X	X
Small/Short-Term Mining, Including Sand and Gravel	X**	X**	XY	O	X**	X**	XY	XY	XY
Minor Dredging Projects/Dredge Material Disposal	X**	X**	XY	O	X**	X**	XY	X**	XY
Minor Streambed Alteration	X**	X**	XY	O	X**	X**	O	X**	XY
Small and/or Short-Term Construction Projects (See "Stormwater" also)	X**	X**	XY	O	XY	X**	O	O	O
Small /Temporary Dewatering Projects (such as excavations during construction)	X**	X**	XY	O	O	X**	XY	X**	X**
Small Construction/Maintenance Projects in Wetlands or Waterways	XY	X**	XY	O	XY	X**	O	X**	O
Bridge Seismic Retrofitting	O	O	XY	O	O	O	O	X	O
Miscellaneous									
Small Inert Waste Disposal Operations	X**	X**	XY	O	XY	X	XY	XY	XY
Air-Conditioning Condensate Disposal	XY	X**	XY	O	XY	O	XY	**	XY
Small Cooling Water/Elevated Temperature Water Disposal	XY	X**	X**	O	XY	O	XY	O	O
Minor Brine Disposal	O	O	X**	O	O	O	O	O	O
Minor Hydroelectric Projects	XY	X**	X**	O	X	X**	XY	O	O
Emergency Discharges	O	O	O	O	O	X**	O	O	O
Timber Harvesting (operating under an approved plan)	X**	X	X	O	X**	X**	X	Y	XY
Incidental Discharge of Oily Wastewater During Oil Spill Response Activities	O	O	O	O	O	O	O	X	XY
Clean Oils	X**	O	X	O	X	O	O	O	O
Utility Vault and Conduit Flushing and Draining	O	O	O	O	O	X**	O	O	X**
Specified Contaminated Soils	XY	O	O	O	O	O	O	O	XY
Underground Tank Abandonments/Replacements	O	O	O	O	O	X**	O	O	O
Lake or Reservoir Drainage Projects	XY	O	O	O	O	X	O	O	O
Use of Reclaimed Water	XY	O	O	O	X	O	O	O	XY
Undeveloped Transportation Corridor									

X = Waiver category pre-SB 390
Y= Waiver renewed post-SB 390.

** = Discharge category covered by a separate conditional waiver, Statewide GO, RB GO, Stormwater Permit, 401, WDR, NPDES, delegated to other agency, conditional prohibition, or a catch-all category.
Red shading indicates discharge is not covered by regulatory tool as a category, RB may regulate per TMDL implementation.
O = Gray shading indicates discharge category is assessed on a case by case basis.
Green shading indicates category covered by statewide General WDR for Low Threat Discharges Order 2003-003
NOTE: Data acquired by phone conversation with regional board staff in January 2007. Blank cells indicates more information is needed.

Furthermore, there are many specific actions already underway in these four areas of concern, as documented below. Since these actions are underway, they include 'next steps' currently envisioned by staff.

Irrigated Agriculture

An estimated 80,000 growers, who cultivate over 9 million acres, are subject to conditional waivers of waste discharge requirements in the Central Coast, Los Angeles, and Central Valley regions. I support adoption by other regional boards of conditional waivers for discharges from irrigated agriculture in their regions.

Irrigated agriculture, through leaching of salts, fertilizer and pesticides has resulted in degradation of groundwater, particularly in the San Joaquin Valley groundwater basins. While the impacts of fertilizers and pesticides can be lessened with better farm management practices, salinity will have to be addressed on a regional basis.

The State Board and Central Valley Regional Board held a workshop on salinity problems in the valley and how to mitigate or correct them, and the Central Valley Board is in the initial stages of developing an amendment to their basin plan to address salts.

The State Board works with the Department of Pesticide Regulation to implement the legislatively mandated Pesticide Contamination Prevention Act to protect ground water resources from potential impacts of agricultural use of pesticides.

The State Board supports regional boards and agricultural coalitions/groups in the implementation of their outreach, education and monitoring and reporting programs.

The State Board will evaluate the pilot project that assigns roles for implementing the waiver in the Central Valley to some County Agricultural Commissioners and will recommend whether to extend and/or enlarge this approach.

The state and regional boards will monitor participation by growers in the irrigated agriculture waiver program. Participant disclosure requirements in the Central Valley coalition groups will improve grower accountability. We will assist regional boards in taking enforcement actions against non-participants.

Grazing

Approximately 20 million acres of California rangelands are managed for livestock grazing by private landowners. Livestock grazing additionally takes place on

approximately eight million acres of public land in the State. Grazing can potentially impair water quality by adding inorganic and organic laden sediments and bacterial contaminants to water, and by physically altering riparian and in-stream habitats. Grazing on non-irrigated rangeland is not addressed in any of the waivers developed for irrigated agriculture.

In 1995 the State Board accepted the California Rangeland Water Quality Management Plan developed by a broad-interest based advisory committee with federal funding. The focus of the 1995 Plan was on voluntary implementation of management practices to prevent sediments, nutrients, pathogens and thermal pollution from exceeding prescribed water quality control plan (basin plan) standards.

State Board staff has recently held several meetings with livestock producers, environmental advocates, technical assistance organizations, and regional board management and staff to initiate updates to the 1995 Plan to comply with new legislative mandates and the Board's 2004 Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program.

The State Board is also working with the US Forest Service and the Bureau of Land Management to update their grazing programs on public land.

Confined Animal Facilities (CAFs)

CAFs are not distributed evenly in the regions. Although all regions have some CAFs, the majority (about 75%) of the large operations (dairies, feedlots, and poultry operations) are in the Central Valley region. California is the number one state in dairy animals, and it is among the top ten in chickens (eggs and meat) and turkeys.

The primary water quality concerns with CAFs are nitrate and salt impacts to ground water. The Colorado River Basin Regional Board and the Santa Ana River Regional Board have issued NPDES permits to all dairies and feedlots in their regions.

The Central Valley Region has recently released a draft order (general waste discharge requirements) that will apply to all dairies in the region, and will significantly increase regulation of how manure is stored and applied to cropland. Other regions are attempting to update regulatory programs to ensure compliance with the revised federal regulations for concentrated animal feeding operations (CAFOs).

The Central Valley Regional Board's draft order for dairies includes groundwater monitoring to detect any potential contamination at an early stage. It also includes liners for lagoon ponds for storage of animal waste, and application of manure at the facility's cropland according to an approved nutrient management plan.

The State Board has made available approximately ten million dollars in Prop 13 and Prop 50 grants to develop dairy ordinances, and develop and implement waste management practices at dairies, and will continue to provide assistance when funds are available.

State Board staff actively participate in many CAF related workgroups (such as the California Dairy Quality Assurance Program, the Foreign Animal Disease Workgroup, the Bio-energy Interagency Working Group, and the California Biomass Collaborative) to

coordinate regulatory efforts, reduce air emissions at CAFs, use manure in anaerobic digestors to produce methane for energy production, control animal disease epidemics, and bacterial contamination of foodstuffs.

Timber Operations

The North Coast, Central Coast, Central Valley and the Lahonton regional boards have waiver policies that cover a variety of timber operations. For non-federal lands these waivers rely heavily on the Board of Forestry (BOF)/ California Department of Forestry's (CDF) Forest Practice Rules and their implementation programs.

The waivers of North Coast, Central Valley and Lahonton regional boards also address timber operations on US Forest Service lands. Furthermore, the North Coast Regional Board has used both individual and general (watershed) WDRs to address non-federal timber operations, and applied TMDL implementation plan requirements to both US Forest Service and non-federal timber operations.

The State Board is collaborating with BOF and CDF in development of a Joint Policy Statement, promulgation of revised logging road and road management plan regulations, interagency mitigation monitoring program, and evaluation of scientific literature to protect threatened and endangered anadromous salmonids.

The State Board is collaborating with US Forest Service to update the 1981 Water Quality Management Plan and Management Agency Agreement to reflect changes in the regulatory landscape and to address a wide variety of land uses (including grazing) on national forest lands.

The State Board, in collaboration with the Bureau of Land Management, is developing a Management Agency Agreement and a Water Quality Management Plan which could also address a wide variety of land uses on public lands.

10. How is state board assisting the regional boards with the perchlorate problem?

Regional Water Boards have regulatory oversight of over 30 perchorate contaminant sites. The State Board has for several years hosted a monthly multi-agency roundtable to discuss perchlorate and other contaminants of concern. In these roundtable meetings, Regional Water Boards and other state and federal agencies share information on source identification, regulatory and remediation strategies, treatment technology, analytical methodology, and pollution prevention.

The State Water Board also developed the strategy of prioritizing military facilities for investigation as perchlorate sources based upon proximity to perchlorate impacted public supply wells.

At the request of the Santa Ana Regional Water Board and local agencies in the Rialto-Colton area, the State Board provided over $6 million in grants for wellhead treatment of perchlorate-contaminated groundwater.

Is each board addressing this problem independently?

The nature and extent of perchlorate contamination is unique to particular site conditions. Additionally, sources of perchlorate and responsible parties vary from site to site. With the exception of one site, which is being addressed directly by the State Board due to charges that the Santa Ana Regional Board is biased, each board addresses each site separately, within the context of the support actions listed above.

11. Is the testing, monitoring, and remediation of contaminated surface water and contaminated groundwater uniform throughout the regional boards?

Surface water monitoring is coordinated through the Surface Water Ambient Monitoring Program (SWAMP). SWAMP has established protocols for field sampling, a Quality Assurance Management Plan with defined measurement quality objectives and a complete set of defined water quality data elements for managing data. Currently the SWAMP program and those projects receiving grant funds from the Water Board are collecting surface water samples that are SWAMP "comparable." Over the next 12 months, all Board programs that collect surface water data (i.e. TMDL, ASBS, NPS) will require SWAMP comparability.

Surface water remediation activities are not uniform throughout the state, nor should they be. The actions required to cleanup impaired surface waters vary widely. TMDLs are the planning documents that specify the general approach to remediation for each impaired surface water in the state.

In groundwater, for the most part, the methodology for testing and monitoring is also uniform. Remediation strategies and technologies are, however, tailored to site and contamination conditions.

The State Water Board contracts with 20 counties for regulatory oversight for cleanup of over 6,000 petroleum UST sites. The Regional Water Boards have regulatory oversight for cleanup of over 7,000 petroleum underground storage tank (UST) sites as well as over 1,800 non-UST contaminant sites, including military facilities and the perchlorate sites.

The State Water Board hosts training program and regular roundtable discussions during which all aspects of contaminant site management are discussed. Additionally, the Water Boards have collaborated with DTSC staff to produce Uniform Site Assessment tools that are intended to ensure that both DTSC and the Water Boards have a common and uniform reference for the site assessment process.

If not, does the board intend to provide guidance in this area for surface water? For groundwater?

There are no plans at present to provide further guidance in this area for surface or groundwater, other than full implementation of 'SWAMP comparability.' *I believe, however, that there are gaps and inconsistencies in the conceptual design and implementation details of monitoring programs around the state that, and that significant benefit could be obtained by further efforts in this area.*

12. Does the Porter-Cologne Water Quality Act provide the regional and state boards with sufficient authority to deal with the potential spread of E.coli from domestic animal production, wild animals, manure spreading, or irrigation practices?

Yes, with two possible exceptions. First, wild animals are by definition not within the direct control of either any regulated party or ourselves. Second, irrigation practices are not within our control except to the extent they involve source waters subject to our control (e.g., polluted surface water, or recycled water).

If so, should the state and regional boards act to help prevent contaminants like E.coli from entering into the food chain from water borne sources?

Yes. However, the primary obstacle to preventing the spread of dangerous strains of E. coli to the food chain is not regulatory limitations but the limited state of scientific knowledge and budgetary resources for sampling and analysis, identification, and determining actual sources of specific strains of E. coli.

The most important roles for the Water Boards are to regulate waste discharges in order to keep pollutants from spreading to surface waters, and to work with the agencies that have expertise over public health issues to ensure that food safety practices do not inadvertently cause adverse impacts to water quality. Effectively fulfilling these roles depends on monitoring data and science that are incomplete. Our staff seems to be doing a reasonable job given the constraints they face. As stated previously, however, I believe that under funding of our SWAMP program is a significant obstacle to fulfillment of our mission.

Regional Water Boards have already established water quality objectives for coliform bacteria to protect human health. However, coliform bacteria are present wherever mammals live and release even small quantities of fecal wastes to the environment. The Water Boards' regulatory tools cannot completely eliminate the presence of coliform bacteria in surface water.

The Central Valley and Central Coast Water Boards began regulating irrigated agriculture several years ago, making California the first state in the nation to regulate agricultural runoff. The current requirements include management plans to control pollutants in runoff, and to conduct monitoring to identify where pollution is occurring so that the Water Boards can require additional measures as necessary to address specific problems. The Los Angeles Water Board, which has limited agriculture, more recently adopted an agricultural regulatory program that requires management practices that have the effect of filtering pathogens from runoff.

Due to the likely connection between cattle and E. coli O157:H7, as well as other water-borne pathogens, the Water Boards have recently turned their focus to increased regulation of grazing. Several recent TMDLs in the Central Coast Region prohibit grazing unless the discharger submits a nutrient management plan (i.e., an enforceable plan for implementing management practices to prevent the spread of pathogens to surface water). Central Coast staff is in the process of developing region-wide grazing requirements. Other bacteria and pathogen

TMDLs have been adopted around the State or are being developed. The Central Coast Water Board is actively working on an E. coli TMDL for the Salinas River watershed. The TMDLs are important in assessing contaminant sources, as well as identifying mechanisms to prevent the further spread of E. coli. These efforts and the agricultural regulatory program should continue as the body of data increases. Increased ambient surface water monitoring by the regional Water Boards could also help to identify pollutant sources or areas of concern. Both ambient monitoring and TMDL development also help to assess the role of urban stormwater runoff in E. coli contamination.

One concern that has been expressed is whether the use of recycled domestic wastewater is a potential E. coli source. These concerns are unfounded. Recycled water must receive at least tertiary treatment to meet Department of Health Services public health standards for irrigating leafy greens, and is tested more frequently than other types of water used for irrigation. Tertiary treatment is adequate to remove E. coli, and there is no evidence that E. coli "regenerate" after tertiary treatment.

What steps do you support at the state and regional board level?

During the past six months, the Water Boards have learned that it is critical for all agencies regulating food safety and related environmental issues to work together to develop a program that adequately protects the consumer and the environment. Without a cooperative approach, some proposed food safety practices could impair water quality or even violate existing Water Board requirements for irrigated agriculture in the existing waivers. This scenario is disadvantageous to growers, and it is unnecessary because water quality, habitat protection, and food safety are compatible if we take a reasonable approach and make informed decisions.

The Water Boards have helped to fund a scientific conference this month, where experts from around the country will discuss how best to advance the science needed to protect both the environment and food safety. The State Water Board recently awarded a $1 million grant to study food safety and environmental quality. The Water Boards have funded other research and implementation efforts for water quality practices that reduce pollutant runoff from irrigated agriculture. This research shows that one of the best ways to reduce the amount of pathogens and other pollutants in irrigation runoff is conservation practices such as vegetated buffers and hedgerows. Unfortunately, these practices have been viewed by some buyers of fresh produce as risk factors, without a scientific basis for that view.

13. **Please provide information on the irrigated agriculture polluted runoff programs that regulate manure application, and the programs that regulate the proximity of domestic animal production to spinach and other leafy green vegetable production areas that are in effect.**

The State Water Board has statewide waste discharge requirements for the application of sewage biosolids. These requirements specify application

methods and setbacks from waterways to prevent bacterial contamination of water bodies.

The State and Regional Water Board are not regulating the land application of animal manure. The Department of Food and Agriculture has some reporting requirements for manure application. Purchasers sometimes impose requirement on growers with regard to manure use on edible crops. Most organic farmers do not apply manure to their crops.

Some TMDLs (e.g., pathogens in the Tomales Bay) include regulation of runoff from farms and ranches to control pathogen contributions from those locations.

Do you believe these programs are adequate?

I do not know. Most of the adopted TMDLs that have been adopted to address pathogen impairments of surface waters have not been in place long enough to evaluate their success or failure.

Would you recommend a reporting system on manure application similar to those on pesticide application in order to obtain a better understanding of the scope of the potential problem?

Not on a statewide basis at this time. However, manure reporting might be appropriate if water quality monitoring shows significant manure related pollution in a particular region or waterway. My recommendation is based on the fact that manure application reporting would not address the more important informational gap of the spatial and temporal variability, and species and strain composition, of pathogens in waterways that come from manure sources. Increased funding for our surface water monitoring program could provide such data, and I believe that should be a higher priority than manure application reporting (although both might be appropriate in watersheds that have been documented to have significant manure-source pollution).

It is worth noting that there are potential water quality benefits from land application of manure, compost, biosolids, and green waste. Their use improves soil quality by adding organic carbon to soils. High quality soils leach fewer pollutants to groundwater. These materials also provide nutrients that may be less soluble or mobile than nutrients in synthetic fertilizers, although nutrient application rates from bulk application of these materials are harder to control than from application of synthetic fertilizers. I would not want to discourage use of these materials as soil amendments, by creating another set of regulatory requirements, without a factual basis for doing so.

14. In light of these recent developments, how is the state board working with other state agencies to manage the Delta?

The State Water Board works with other regulatory agencies, such as Department of Fish and Game, to exchange information that each agency needs for its regulatory purposes and to coordinate regulatory actions. State Water Board management and staff participate or have participated in a wide range of meetings including:

- CalFED Operations-- regarding current operations and achievement of objectives
- Water Operations and Management Team (WOMT)-- operational decisions are made in conjunction with fisheries agencies
- Data Assessment Team (DAT)-- reports to CalFED Operations on fisheries issues
- Delta Vision Core Team – provide information to Delta Vision Blue Ribbon Task Force created under the Governor's Executive Order S-17-06
- Other CALFED interagency groups including: Bay-Delta Public Advisory Committee (BDPAC), Bay Delta Advisory (BDA) Committee, Water Use Efficiency (WUE) Subcommittee, Water Quality Subcommittee, Interagency Watershed Advisory Team (IWAT), Coordinated Monitoring, Assessment, Research Program (CMARP), Performance Measures Team, Delta Regional Ecosystem Restoration Implementation Planning (DRERIP), Pelagic Organism Decline Contaminants Work Team, Interagency Watershed Advisory Team, Ecosystem Restoration Program

We also regulate agencies with operational roles (e.g., Department of Water Resources and Bureau of Reclamation). Regulation includes development of requirements to protect the Delta, enforcement of those requirements, and collaborative studies when there is reason to believe that changes in requirements might better protect the Delta.

In December, 2006 the State Water Board approved an updated Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). This update to the 1995 Bay-Delta Plan included, among other things, recognition of the importance of four emerging issues confronting the Delta:

- Delta and Central Valley salinity
- Pelagic Organism Decline
- San Joaquin River Flows and Salmon
- Climate Change

Although the Board did not have sufficient environmental review documentation to support further action in December 2006, it established a schedule to receive additional information on these issues during the coming year. To date, a workshop on southern Delta salinity was held on January 16 and 19, and a workshop on the Pelagic Organism Decline (POD) was held on March 22 (the same day that the Alameda Superior court issued its order to shut down Delta pumping). The purpose of the POD workshop was to receive information from state and federal agencies and other interested parties on:

- Progress report on current studies and available results, including the results of work conducted to investigate the effects on pelagic organisms resulting from food web changes, the establishment of invasive species, water exports, changes in salinity, and contaminant load in the Suisun Marsh and Estuary;

- Proposed studies and a projected timeline for implementation;
- The status of the scientific peer review of the work plan prepared by the POD work team; and
- Interim actions the State Water Board should consider based on currently available information.

The State Water Board received information from a number of State, federal, and local agencies, and other entities. A large body of information was submitted, compiled on the State Water Board's website at: http://www.waterrights.ca.gov/baydelta/pelagicorganism.html

The State Water Board is considering this information and staff is working on developing short and long-term actions that could or should be taken. *I specifically requested from staff at the end of the March POD workshop a list of short-term options for preservation and protection of endangered species (most notably delta smelt) that could be implemented this summer or fall. I also specifically requested that a meeting be scheduled with Bureau of Reclamation staff to understand short-term recirculation options and how they might be help to address southern Delta salinity compliance or POD decline. That meeting is scheduled to occur on April 19th.*

What role will your board plan in the short term?

I do not know at present. As noted above, I directed staff to prepare an options list at the close of the March 22nd POD workshop.

In the short term, if there is adequate factual evidence, the State Water Board can consider water rights or water quality enforcement actions, including cease and desist orders and civil liability penalties, or can seek injunctive relief in court, to protect Delta fisheries and other beneficial uses. Alternately, the State Water Board could consider changing the terms and conditions of water rights licenses, discharge permits, or other regulatory mechanisms (e.g., conditional waivers). These actions would take perhaps 6-8 months to complete, although it might be possible to take action in somewhat less time.

Changes in the Bay-Delta Water Quality Control Plan would take considerably more time (e.g., 24 months) due to environmental review requirements. Consequently, such changes are not options in the short-term, as I define it.

What is your view of how the Delta should be managed in the longer term?

I do not have an opinion as yet.

15. **The Porter-Cologne Act provides authority for the board to protect the beneficial uses of water in the Delta. How is the board using this authority beyond setting salinity standards?**

The Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) establishes flow and water quality objectives to protect the following beneficial uses:

- Municipal and Industrial (including drinking water)
- Agricultural
- Fish and Wildlife

Water quality objectives in the plan are established at various locations for salinity, dissolved oxygen, and chlorides. Flow objectives in various forms, including minimum flows, Delta outflow, and Delta pumping, are established for various seasons and locations.

Many of these water quality objectives, including most of the salinity objectives, are related to flow in the Delta or operations of facilities in the Delta. The Board has historically implemented these objectives by regulating water right holders whose diversions and uses of water affect flows and export operations in the Delta. This historical practice has imposed the full burden of implementation on a limited number of parties. In the future, the Board is likely to expand the number of parties held responsible for actions to satisfy salinity and dissolved oxygen objectives (e.g., through controls on waste discharges).

The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins also establishes water quality objectives applicable to the Delta for various contaminants including pesticides. These flow and water quality objectives are implemented by the State Water Board by developing terms and conditions in: 1) water rights permits and licenses; and 2) National Pollutant Discharge Elimination System (NPDES) permits, Waste Discharge Requirements (WDRs), and conditional waivers of WDRs, as appropriate. The cited Plan also contains amendments that have established Total Maximum Daily Loads (TMDLs), and implementation plans for achieving those loads, for various pollutants in, and tributary to, the Delta, such as:

- Dissolved Oxygen in the Stockton Deepwater Ship Channel
- Salinity and Boron in the San Joaquin River
- Mercury
- Pesticides

Load limits in these TMDLs, are in turn, incorporated into discharge limits in NPDES permits, WDRs, and waivers of WDRs.

16. Do you think the state board should standardize the criteria various regional water boards have developed for use of recycled water for groundwater recharge, or should this be left to the regional boards?

The State Board should take action, and as soon as possible. The sad story of water quality protection concerns as an impediment to development of recycled water supply has been going on far too long to allow it to continue. It began in the mid-1970s when the legislature explicitly stated that master reclamation permits issued by the Water Boards could not restrict the use of recycled water on the basis of salinity concerns. Within a year, chief counsel to the State Board ruled that the legislative prohibition did not prohibit the use of waste discharge requirements to restrict recycled water use on the basis of salinity concerns. We are still arguing about salinity concerns today, most recently in a decision by the

Los Angeles Regional Board that I observed in person in January. These arguments are mostly fruitless, and expend staff and stakeholder time that would yield greater water quality benefits if invested in other water quality issues.

Are there reasons why different criteria would be needed when using recycled water to recharge groundwater?

There are reasons, but few of them are good. There are some legitimate reasons, however, so we need to be careful to sustain regional authority in those areas where site specific differences exist. For example, a subsurface geologic formation can be physically damaged by water quality or injection and pumping patterns, which in turn would limit future beneficial use of the aquifer. Operational plans may be necessary and appropriate in some cases, and Regional Boards, not the State Board, will make the best regulatory decisions with regard to those plans.

17. What specific steps should the state and regional boards take to protect and manage the state's groundwater beyond the current monitoring effort?

California law does not give the Water Boards authority to manage groundwater. Groundwater management is a local issue unless the groundwater basin has been adjudicated. The Water Boards role is to set water quality standards via the Basin Plans, and to implement those standards in permits or when clean-ups are necessary.

Each Regional Water Board basin plan includes a groundwater quality component that sets standards/ water quality objectives for groundwater. Basin plans also include prohibitions of certain waste discharges, such as septic tanks in areas with significant problems. The regulatory actions that implement the basin plans include issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminated sites (e.g., discharges without requirements such as spills and leaks). The first WDRs for landfills were issued in the 1940s. Continued regulation has resulted in over five thousand currently active WDRs for discharges of waste to land. Over 140 staff support issuance of WDRs.

Discharges of waste that were never authorized are subject to cleanup or abatement. The board cleanup program has closed over 30,000 underground storage tank (UST) sites; with 13,000 additional UST sites under investigation and cleanup at present. It has also closed 750 non-petroleum contaminant sites, with 1,800 additional sites under investigation and cleanup. The UST program is supported by about 450 Board staff.

The UST Leak Prevention Program is a national model in setting standards for tank design including secondary containment. Congress adopted several of the UST Leak Prevention Program's recent successes in this year's Energy bill. The State Water Board sponsored legislation requiring the most environmentally protective design in the nation for new USTs.

The State Water Boards Underground Storage Tank Cleanup Program reimburses over $200 million annually for investigation and cleanup at UST sites.

It is, in essence, an insurance program funded by a fee on liquids stored in regulated tanks. It is a very popular program. *I believe it should be considered as a potential model for other groundwater protection challenges (e.g., pollution from septic systems, below).*

Other groundwater protection activities include: overseeing perchlorate investigations and cleanup at priority military facilities; consideration of actions to protect groundwater quality from the accumulation of salts; adoption of regulations for discharges from septic tanks in 2007. Septic tanks are a widely know to cause degradation of groundwater. The draft regulations proposed will not eliminate the impacts of septic tanks but will lesson their effects. It is important to note that a properly operating septic tank will still release some amount of pollutants and depending on the local conditions this may contribute some amount to groundwater degradation. A state sponsored insurance program that provides funds for wellhead treatment if a groundwater well were contaminated by upgradient septic systems might be helpful. The only other fully protective alternative of which I am aware would be a requirement for non-septic, on-site sewage treatment systems. I understand that most rural counties oppose this alternative.

One system-wide and serious problem we face is the difficulty in identifying responsible parties for groundwater pollution once it is identified. This is a scientific effort that requires not just data but objective evaluations of data. We often rely on dischargers or their consultants for these evaluations. The idea of a statewide monitoring and scientific 'institute,' mentioned above, could help to address this serious problem.

18. Should the state board and regional boards take action to reduce beach and coastal pollution?

Of course, but we are taking many actions already. The following list covers our primary actions to protect coastal water quality, including perhaps most importantly for beaches, pathogen identification and control efforts (the usual cause of beach postings or closures).

Ocean Standards

The 2005 California Ocean Plan is the State's water quality control plan for near-coastal ocean waters. The State Board is currently in the process of amending the Ocean Plan to address a variety of water quality issues, including discharger monitoring programs, including new monitoring requirements for storm water and nonpoint sources, adding a new standard for fecal coliform bacteria in shellfish harvesting areas, controlling vessel discharges, controlling marine debris, a new standard to address desalination discharges, and updating/improving other existing components of our ocean standards. These amendments are targeted for Board consideration in 2008.

Sediment Quality Objectives in Bays and Estuaries

The State Water Board is leading the nation on developing sediment quality objectives for toxic substances. Sediment quality objectives for bays and estuaries are being developed now that include a scientifically defensible "multiple line of evidence" approach. These new standards will address direct

effects on benthic aquatic life, addressing detrimental physiological responses in communities due to toxic pollutant concentrations. In addition indirect effects on human health and wildlife due to the bioaccumulation of pollutants in the aquatic food web will also be addressed. The first phase of these new standards is targeted for the end of 2007.

Coastal Power Plants, Once-through Cooling

Section 316(b) of the Clean Water Act states: "the location, design, construction, and capacity of cooling water intake structure [for a power plant] reflect the best technology available for minimizing adverse environmental impact." At issue is the entrainment and impingement of marine/estuarine aquatic life at once-through cooling intake structures, currently pumping over 16 billion gallons a day of coastal water. The State Water Board is currently working on a statewide policy to strictly control the impacts of once-through cooling at 21 coastal power-generating facilities, with a target date for completion by early 2008.

Rapid Indicators

Monitoring is a key ingredient to protecting our beaches. The State Water Board, working with the Southern California Coastal Water Research Project, leads the nation in the development of Rapid Indicators as an approach to monitoring for pathogen contamination of beaches. Once implemented this will provide results in hours rather than the using the current methods, which take a whole day to complete. Great progress is being made in this emerging technology and the State Water Board and Ocean Protection Council are currently funding the final development of rapid indicators.

Vessel Discharges

Under the Clean water Act a state can have all or portions of its waters designated by USEPA as no-discharge zones (NDZs) for vessel sewage. There are currently ten NDZs in California's coastal waters, however the primary emphasis is on small vessels (e.g., recreational and fishing boats). Sewage discharges from cruise ships and other ocean going vessels obviously have a potentially much greater impact on the marine environment. Some cruise ships can carry up to 5,000 persons (crew and passengers) and generate as much as 100,000 gallons of wastewater per day. The State Water Board has formally requested the USEPA to create a NDZ for sewage discharges from ships anywhere in State waters (three nautical miles from shore). USEPA is currently considering our application.

Onsite Wastewater Regulations

In some areas, it has been estimated that as much as 30% of the total bacteriological loading to coastal waters is associated with onsite wastewater treatment systems (OWTS). The State Water Board is required to adopt regulations for OWTS pursuant to Section 13291 of the California Water Code. We believe that the OWTS regulations will be a step forward towards the elimination of pollution from these sources. The State Water Board has made the completion of this rulemaking effort one of its priorities. State Water Board staff has been publicly directed to move this process forward expeditiously.

Storm Water and Areas of Special Biological Significance (ASBS)
The National Pollutant Discharge Elimination System (NPDES) Storm Water Program is one way that we are working to reduce pollution in urban, industrial, construction, and highway runoff. One aspect of this program is the enforcement of the waste discharge prohibition in ASBS. The State Water Board designated 34 ASBS in the 1970s, and the Ocean Plan prohibits waste from being discharged to ASBS. Special rules for obtaining "special exceptions" from the discharge prohibition into ASBS are targeted for Board consideration in 2008. Once these rules are in place, enforcement action is anticipated against those who do not apply for or receive an exceptions, but continue to discharge wastes to ASBS.

Clean Beach Initiative
In 1997, AB 411 (Chapter 765, Statutes of 1997) mandated that beaches with storm drains that discharge during dry weather and visited by more than 50,000 people per year be monitored at least weekly from April 1 through October 31. This is the responsibility of the local health officer or environmental health agency. Beginning in 1999, the California Department of Health Services (DHS) regulations implementing AB 411 required that local officials must post warning signs for beaches that exceed standards set by the DHS. Beaches suspected of being contaminated with sewage must be immediately closed until bacterial monitoring indicates the waters are safe for human contact. AB 1946 (Chapter 152, Statutes of 2000) requires local health officers to submit to the State Water Board, on a monthly basis, documentation of all beach postings and closures. Coastal monitoring and reporting generally exceeds AB 411 requirements, especially in southern California where weekly, or more frequent, monitoring occurs year-round.

The monitoring data from coastal counties is consolidated in a Beach Watch database at the Water Boards which is available through the Water Board web site at http://beachwatch.waterboards.ca.gov/. Through this database, the public can view beach posting information, and the Water Boards can:

1. Evaluate project proposals submitted for CBI Grant funding
2. Analyze trends in beach water quality and the overall condition of California beaches for recreation
3. Identify areas in need of bacterial TMDLs through our water quality assessment for federal 305(b) assessment and impaired waters identification for federal 303(d) purposes.
4. Analyze the data for the protective and informative value it provides the public (Beach Watch is not the up-to-date site for public consultation on beach conditions and is not represented as such. Individual county sites provide this service.).
5. Report beach water quality conditions to USEPA as required under the federal Beach Act.

This federal reporting is the data source for the introductory paragraphs to question 18. Part of the reason these numbers sound discouraging is California heavily monitors its beaches, much more than anyone else in the nation. We are defining the problem and finding it is a complex soup

of ingredients. Several recently completed CBI funded projects showed no discernable change in the AB 411 monitoring of associated beaches. The projects addressed known sources of contamination, and we know they reduced or eliminated the contribution from that source. However, so many other sources persist that no change was realized in normal monitoring and reporting.

Clean Beach Initiative Grant Program

The State Water Board established the Clean Beaches Initiative (CBI) Grant Program in 2001 to respond to the poor water quality and dramatic number of postings and closures revealed by monitoring at California's beaches required under AB 411. The major goal of the CBI Grant Program is to reduce health risks through improved water quality at California's beaches. CBI grant funds are being used to 1) improve, upgrade, or convert existing sewer collection or septic systems to reduce or eliminate sewage spills; 2) implement urban runoff pollution reduction and prevention programs; and 3) implement management practices to eliminate upstream sources of bacterial contamination for the restoration and protection of coastal water quality. Project proponents that receive CBI grant funds are required to submit a monitoring plan as part of their project, and prepare a final report that evaluates the project's effectiveness at reducing beach contamination.

The Budget Act of 2001 appropriated $32,298,000 from the *Costa-Machado Water Act of 2000* (Proposition 13), to implement projects at 38 specific beaches. Proposition 13 required the State Water Board to work with the California Coastal Commission to ensure that funded projects were consistent with federal and state requirements. 37 grants were awarded for projects totaling $29.4 million.

AB 2534 (Chapter 727, Statutes of 2002) appropriated an additional $46 million from the *California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002* (Proposition 40) to the CBI Grant Program. These funds were awarded in two phases: Phase I awarded $21.5 million for 28 projects and Phase II awarded $23.2 million for 18 projects.

In November 2002, the voters approved Proposition 50 authorizing the issuance of bonds to fund a variety of water projects, including $100 million for coastal water quality improvement projects. The State Water Board allocated $23 million of this sum to the CBI grant program. 25 concept proposals were submitted by January 31, 2007 and the Board will consider the Recommended Project List (RPL) for adoption on April 18, 2007.

In November 2006, voters approved the *Water Quality, Safety and Supply, Flood Control, Natural Resources Protection, and Park Improvements Bonds Initiative Statute of 2006* (Proposition 84) authorizing the issuance of bonds to fund a variety of water quality improvement projects. $90 million is allocated to the State Water Board for coastal water quality improvement projects. Of this amount $35 million is available for Areas of Special Biological Significance (ASBS), $18 million for Santa Monica Bay Restoration (SMBR), and $37 million for the CBI Grant Program.

19. Should the state board and regional boards act to further reduce waterway contamination from stormwater pollution in light of these (the numeric effluent expert panel) findings?

Yes, we certainly need to take further action with respect to stormwater pollution. Stormwater pollution is probably the most important single category of pollution in the state, and our past efforts to regulate it, although successful in some respects, are nowhere near adequate.

Most (but not all) participants at our expert panel workshops seemed to agree that stormwater regulation as currently and historically practiced in California has not created adequate progress toward compliance with receiving water objectives. Most participants seem to think that we can do better, but differ about means. Interestingly, many of those who are opposed to numeric limits seem to be supportive of stronger enforcement of other requirements (e.g., best management practices), and of efforts to ensure that all dischargers who should be subject to current regulations are in fact being regulated.

I agree that we can do better. *I strongly believe that we must do better.* Non-point source pollution is widespread and significant. We have not yet done enough to control it. Because controlling it is difficult, as demonstrated by efforts in more than 20 large (Phase I) MS4s over the last decade or more, we cannot be satisfied with the status quo.

The expert panel report on numeric effluent limits was helpful in this regard, but does not provide a complete blueprint for moving forward. Our draft general construction permit, for which workshops will be held on the 17th and 20th of April, is an attempt to implement the relevant recommendations of the panel and other recommendations made by stakeholder groups during workshops on the panel report. We will see how stakeholders respond to the draft, which is intended to be much more performance-measurement oriented than past stormwater permits, although it does not widely implement numeric effluent limits.

Do you support the establishment of numeric limits for stormwater pollution?

As you know, this issue is controversial and is related to several stormwater permit re-issuance processes directly under the authority of the State Board (that is, statewide industrial and construction permits, and the statewide Phase II municipal separate storm sewer systems permit (MS4s)). It is also relevant to appeals of Phase I MS4 permits issued by the regional boards. Consequently, I am restricted from discussing certain aspects of this question by ex parte communications rules.

Nonetheless, I believe that my general views at this time on the issue will be helpful. First, we need to discuss and decide about numeric limits not in general, but in numerous specific ways. Are they desirable and feasible for pH at construction sites? (This is in fact a specific question that I cannot discuss since the current draft of the statewide construction permit includes a pH numeric effluent limit.) How about for copper in MS4s? Separate decisions may need to be made for each parameter and each regulated setting. We may not have

adequate data to establish limits for some parameters in some settings. And we may need to specify the rainfall conditions under which each limit (if promulgated) applies. Numeric effluent limits are not a topic that a technician such as me can be for or against, in general. My opinion depends on the details.

To be clear, I am certainly not against the use of specific numeric effluent limitations, when they are supported by sound science and provide a more effective mechanism to promote clean water than other available mechanisms. I voted to support the Boeing permit issued by the Los Angeles Regional Board, including many numeric effluent limitations, because they were supported by sound science and were appropriate under the circumstances.

Second, Federal law requires or the State Water Board has previously chosen to require eventual compliance with receiving water objectives for industrial, construction, or MS4 dischargers of stormwater. I have not yet heard anyone question these objectives. Numeric effluent limits are one possible means for achieving such compliance. I have asked staff and stormwater workshop participants to outline other possible means for achieving such compliance. The draft statewide construction permit includes several means of enhancing performance, not just numeric effluent limits.

Third, the greatest weakness in our regulatory approach at present is the 'evaluation and revision' step in the iterative process of improving our management practices or technologies over time, eventually leading to stormwater quality that does not cause exceedances of receiving water objectives. I was very disappointed to learn as a Regional Water Board member, and to have State Water Board staff confirm this, that we cannot 'connect the dots' between receiving water quality and stormwater quality control efforts over the last 10-15 years. Our future monitoring, evaluation, and revision requirements are perhaps as or more important than numeric effluent limits, per se. The current system is lacking in accountability all too often. Any iterative approach will be unsuccessful without clear mechanisms for assessing progress and holding responsible parties accountable for achieving measurable progress.

Fourth, when receiving water objectives exist and a stormwater permittee discharges directly into a receiving water, there is in practice little difference between an effluent standard and a receiving water standard enforced at the point of discharge. Numeric or narrative receiving water standards that are unambiguous (e.g., 'there shall be no acute or chronic toxicity') can be, in some circumstances, more than adequate to protect water quality, if promulgated and enforced, even without numeric effluent limits.

The difficulty, of course, is that standards adequate to protect receiving water beneficial uses are difficult to 'connect upstream' to each discharger. Nonetheless, receiving water standards and the science to connect them with the necessary level of effluent quality at each point of discharge should be pursued over the long run as an 'ideal' solution to water quality protection or impairment. (Less ideal, but more practical, actions will be required in the interim, however.)

Fifth, we could require technology based numeric effluent limits or water quality based numeric effluent limits. The first are likely to be more feasible because

they would be based on an assessment of what can be done to control pollution, in contrast with what must be done to protect receiving waters (even if we don't know how to do that now). But technology based limits don't necessarily satisfy federal law or state precedent that establish receiving water quality as the ultimate endpoint of our efforts, as noted in my second point above. So technology based numeric effluent limits, although more feasible, probably don't constitute an adequate solution unto themselves.

Finally, we need to consider the concept of 'numeric action levels.' Exceeding these levels might trigger enforceable next steps in an iterative process of improvement, but would not per se constitute violations of a permit. Nationally, there are a number of storm water permits that include "benchmarks" for basic parameters. The benchmarks are not numeric limits and are reportedly not intended for use as enforcement tools. They are used to provide feedback to the facility operator regarding the effectiveness of pollution control efforts. An example of this approach is the US EPA multi-sector general industrial storm water permit. I understand that the expert panel recommended a similar approach using technology based numeric action levels for industrial permits. Since alternative approaches to numeric effluent limits typically involve an iterative process, we need to consider in more detail how the concept of action levels might reduce burden on dischargers but still create steady progress toward achievement of receiving water quality objectives.

20. What steps have been taken by the state board to improve its enforcement program?

The State Water Board has created an Office of Enforcement to consolidate the State Water Board's enforcement activities. This Office includes both legal and investigative staff. Staff tell me that this consolidation has allowed us to achieve greater consistency in enforcement at both the State Board and Regional Board level. The Office of Enforcement has reviewed the Water Boards' Enforcement Policy and has identified a number of needed changes to strengthen our enforcement program statewide, including how we determine and levy penalties, and our mechanisms for compelling future compliance from dischargers.

Staff tells me that inclusion of dedicated enforcement legal staff in the Office of Enforcement has allowed us to develop stronger partnerships with external entities responsible for civil and criminal enforcement against environmental crimes, such as local District Attorneys, the California Attorney General and the US Attorney's Office. These partnerships, in theory, will allow us to leverage our enforcement resources, getting more results from any given number of staff.

The Water Boards' recent changes to its data system—the California Integrated Water Quality System (CIWQS)--- includes development of a number of public reports to allow us to be more transparent in our enforcement activities, and to facilitate greater partnership with outside entities such as non-governmental organizations and public interest groups.

Are there measurable and quantifiable improvements in the board's enforcement program?

None that I am aware of. However, just as we have begun to provide better tracking of enforcement measures in CIWQS, we have also begun development of performance measures for enforcement. The Office of Enforcement is preparing a performance-based management plan to guide its activities for fiscal year 2007-2008. That plan will identify how the Office will identify priorities for enforcement and measure improvements. That effort is part of a State Board-wide effort to implement a performance-based management system to evaluate the effectiveness of the Water Boards in protecting water quality. It is also part of an agency-wide effort to strengthen enforcement activities, described in Secretary Adams letter to Senator Perata dated April 6th, 2007.

21. **How can the state board assist the regional boards in enforcing existing law and regulations?**

I believe that we need to continue to separate enforcement functions from permitting functions, and dedicate more staff to the former function. We also need to improve the clarity of our permits and licenses, which all too often are difficult to enforce because the requirements are subject to widely differing interpretations. It might be appropriate to develop a Water Board Academy course on this topic.

Legal staff in the Office of Enforcement work directly with Regional Water Board staff on enforcement matters, providing greater consistency in how enforcement matters are resolved. This has provided a separation of functions that did not exist in the past. This separation strengthens the resulting enforcement actions when they are challenged, and provides greater legal assistance to Regional Water Board staff and management.

Attorneys in the Office of Enforcement are handling some of the most complex administrative enforcement activities in the Water Board system, including the Los Osos/ Baywood Park septic tank enforcement actions and the Rialto/ Colton perchlorate contamination site. They are also working directly with Regional Water Board enforcement staff on some of the more difficult investigations, providing investigative expertise and consistency in approach.

The State also provides training to Regional Water Board investigators. Currently the State Board's Training Academy is establishing an Inspector Certification Program as well as the Super Inspector Mentoring Program to assist Regional Water Board personnel.

The Office of Enforcement is revising and updating the current Water Quality Enforcement Policy, with adoption scheduled to occur in 2007. This policy revision will provide an opportunity to simplify or improve the policy in ways that make enforcement at the regions easier.

The State Board can also organize the Regional Boards to address specific environmental issues on a collective basis. The State Board is working with the

Regional Boards on an enforcement initiative to control the illegal release of plastics from manufacturing facilities and transportation sites. These plastic wastes make up more than 95% of the wastes found on some California beaches and they pose a serious threat to wildlife that may ingest these wastes.

22. What steps has the state board taken to make enforcement information more accessible and understandable to the general public?

As stated in my answer to question 21, the CIWQS system is becoming more useful in this regard as data are loaded into it. Furthermore, I am told that State Board staff have developed, in collaboration with the Regional Water Boards, a system for prioritizing enforcement cases to ensure we are focusing our limited resources at the most serious violations. Periodic tracking, monitoring and reporting of violations and enforcement actions will provide greater accountability to the general public, IF the CIWQS system is sufficiently "user-friendly." *In November of 2006, I requested an independent expert evaluation of the CIWQS system*, much like the expert review conducted for the SWAMP program a few years ago, or the expert panel report on numeric effluent limits.

In addition, an agency-wide Enforcement Communication Strategy is being developed by CalEPA, as described in Secretary Adams letter to Senator Perata dated April 6th, 2007.

23. What steps are you taking to ensure the water rights program is adequately funded and staffed?

I have asked senior staff to prepare a budget change proposal to increase staff in our water rights program.

Are there improvements to the program that can be made to ensure its goals and purposes are achieved and water rights holders receive prompt decisions from the board?

Yes.

Most importantly, the State Water Board has an antiquated water rights information computer system. In Fiscal Year 2006-07, the State Water Board requested and received authorization and funding to develop a web-based replacement electronic Water Rights Information Management System (e-WRIMS). The new system is currently being developed and is on schedule for September 2007 implementation. The e-WRIMS system will:

- Provide the public with web based access to the Division's water right information system.
- Provide services on-line to the public.
- Improve the ability to manage and collect water right fees, track payment, and coordinate fee-related activities.
- Increase the reliability and quality of water rights data.
- Provide reporting tools to properly allocate resources and track ongoing Division activities and assignments.

In addition, based upon a request by the State Water Board, the legislature provided the Division of Water Rights (Division) with additional funding in Fiscal Year 2006-07 for six more staff positions to process water right applications and petitions. We have filled one of those positions and are in the process of hiring the remaining positions. It should take from one to two years to fully train the new staff. Beginning in 2009, the Division should be able to process an additional 30 applications per year from the current rate of 100 applications per year. As stated above, I support additional requests for additional staff or contract resources.

The State Water Board has implemented steps to reduce the backlog in processing water right applications for permits, petitions for changes and extensions of time, and issuance of water right licenses. A review of historical information shows that the backlog in processing water right applications has been reduced by about 30 percent since the Late 1970's. According to the Governor's Commission to Review California Water Rights Law, Final Report, December 1978, "Recent administrative reforms on the part of the Board have reduced the backlog of unprocessed permit applications, but even with such efforts, over 800 applications remain unprocessed." Since October 2003, the State Water Board has reduced the number of pending applications from 719 to 549 (as of March 31, 2007). Not all of these applications are considered "backlog." For instance, there are 23 applications pending that propose water diversion from the Truckee River system. These applications have been pending since the early 1970's, and may not be acted upon until the States of California and Nevada agree to an interstate allocation of the waters of the system.

In general, the most effective step implemented was making applicants and permitees more responsible in the water right process. Before a water right permit or order approving a change can be issued, the State Water Board must complete three steps. First, the State Water Board must comply with the California Environmental Quality Act (CEQA). Second, the State Water Board must determine that the proposal will not adversely affect legal water users. Third, the State Water Board must consider the effects of the project on public trust resources and mitigate those effects if feasible. In addition, if a permit is being issued, the State Water Board must find that water is available for appropriation.

Most of the reductions in backlog have resulted from more stringent implementation of filing requirements. Applicants and petitioners must now submit with their filings all required information and fees, or the State Water Board will not accept the submittal. Applicants and petitioners must also provide sufficient information to demonstrate that water is available for appropriation before an application will be accepted. Applicants and petitioners have always been legally responsible for the cost of CEQA document preparation; however, in the past the State Water Board's practice was to prepare many of these documents in house at no cost to the applicant. Due to limited staff resources the Division no longer prepares the environmental documentation. The Applicants and Petitioners are directed to select a consultant to assist State Water Board staff in the preparation of the CEQA documents and water availability analysis to support the State Water Board water rights process. These new practices are

reducing the number of applications formerly filed merely to hold priority for speculative projects, and the overall backlogs in permitting and petitions.

The State Water Board currently does not have written guidelines for review of water right applications for the purposes of deciding how much water should remain instream to protect public trust resources. Assembly Bill AB 2121 which became effective on January 1, 2005 requires the State Water Board to adopt, prior to January 1, 2008 "principals and guidelines for maintaining instream flows in coastal streams for the Mattole River to San Francisco and in coastal streams entering San Pablo Bay, in accordance with state policy for water quality control... for the purposes of water right administration." Adoption of this policy will provide written principals and guidelines to assist the State Water Board in the determination of the instream flow requirements for the protection of public trust resources in the five designated coastal counties. This policy should assist in the reduction of "backlogged" applications in the five designated counties, including pending applications in the Russian River watershed. This policy is limited to only the five designated counties and will not address the lack of written guidelines statewide. The Division of Water Rights indicates that a draft policy will be completed within the next two months.

In the 2001 and 2002 Legislative Sessions, the State Water Board sought, and the legislature and Executive Branch have approved, more effective enforcement authority for the State Water Board in its administration of water rights. Water Code Section 1825 states: "It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water."

Since then, the State Water Board has pursued a more aggressive enforcement presence in specific watersheds. The Division has conducted more compliance inspections of existing water right projects and more illegal reservoir searches. This compliance activity has resulted in civil liability penalties, but has also generated more applicants filing for water rights, thus adding to the application workload. In order to better prioritize its enforcement activities and ensure the State Water Board is best achieving its goals and purposes, the State Water Board is holding a public workshop on May 1, 2007 to receive information regarding water rights enforcement. Stakeholder input will help us to develop an effective water rights enforcement policy.

I find it difficult to believe that any enforcement policy will not lead to an increase in permit applications or requests to revise existing licenses. We know there are numerous diversions without permits,2 and that numerous licenses no longer fully describe the circumstances of water use. That is why I support an increase in staff for the division. *Failure to increase staff will increase frustration for*

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2 While the State Water Board has made progress in responding to water rights applications, as described above, the number of unlicensed expired water right permits currently numbers 1,087. Of the expired permits, 829 are ready for licensing. State Water Board staff has inspected 310 of the 829 permits ready for licensing. The State Water Board will issue licenses for these permits as resources allow.

applicants; especially those who would like to comply but are unfamiliar with the process and its requirements.

24. Should water rights activities be taken from the state board and moved to another agency where they can be handled separately from water quality programs?

No. It is difficult to see where water rights authority could be appropriately housed if not within the State Water Board. Previous proposals have suggested that the Division of Water Rights should be housed within the Department of Water Resources or within the Resources Agency. Prior to establishment of the State Water Board, water rights activities were the responsibility of the State Water Rights Board. The State Water Rights Board was created in 1956 as part of the same legislation that created the Department of Water Resources. Recognizing that the Department would both hold water rights and operate State Water Project facilities, the Legislature created an independent board to administer the water right functions of state government thus avoiding a potential conflict of interest by the Department. This conflict of interest concern still exists.

Furthermore, in 1967, the California Legislature established the State Water Resources Control Board (State Water Board), combining the State's water quality and water right functions, based on the principle that water quality and water quantity are inextricably interrelated. That principle holds true today. Efforts to split water quality from water rights would lead to artificial categorization of functions as either water quality or water rights.

Instream flow requirements based on the public trust or Water Code requirements for the protection of fish and wildlife, for example, are an important part of water right administration. But for purposes of section 401 of the federal Clean Water Act, instream flow requirements are considered to be water quality requirements, which the State may implement as part of its water quality certification authority. Most of these section 401 water quality certifications contain flow parameters that must be implemented consistent with water rights permits and licenses. Examples of current projects for section 401 water quality certification with flow-dependent considerations are the hydropower projects of the Upper North Fork Feather River (temperature), and the Klamath River (nutrients, temperature and dissolved oxygen).

The State Water Board must also consider water quality effects in issuing water right permits and licenses for water diversion and storage projects. It places flow-bypass requirements in these water right permits and licenses to protect the quality- and quantity-dependent beneficial uses of the water body, as well as to protect downstream water right holders.

Finally, the State Water Board currently considers a wide range of water rights and water quality actions. Water right actions such as hearings to consider water right applications with unresolved protests frequently have, as key issues, water quality concerns and questions. An example is an upcoming hearing on water right applications and a wastewater change petition in the Santa Ana River Watershed of Orange, San Bernardino, and Riverside Counties, where some of the water rights projects propose "conjunctive use" where some water is

proposed to be stored in groundwater basins. A challenge in the Santa Ana River Basin, however, is that the groundwater basins in the area contain plumes of contaminants. The broad understanding offered by a combined water right and water quality control board, makes for easier and better-informed decision-making.

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THURSDAY, MAY 10, 2007

9:31 A.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JEFFREY D. BYRON, Member
State Energy Resources Conservation and Development Commission

AUDREY CHANG
Natural Resources Defense Council

D.J. SMITH
California Large Energy Consumer Association (CLECA)
Constellation Energy

PAUL VERCRUYSSEN
Center for Energy Efficiency and Renewable Technologies (CEERT)

JOSEPH LYONS
California Manufacturers and Technology Association

LISA L. CURTIS
Oil Spill Response Administrator

YVONNE ADDASSI
CAPS

JOHN WHEELER
California Fish and Game Wardens Association

DOUG FLAHERTY, President
Planning and Training Solutions, Inc.
Yorba Linda

PRESTON P. DuFAUCHARD
Commissioner of Corporations

TIM EGAN
Escrow Institute of California

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We will go ahead and begin with a quorum.

Would Jeffrey Byron please come forward. Welcome.

MR. BYRON: Thank you.

CHAIRMAN PERATA: State Energy Resources Conservation and Development Commission. That's a mouthful. Shortly, we call you an Energy Commissioner.

Would you like to open?

MR. BYRON: Yes.

Mr. Chairman and Committee Members, it's a pleasure to have the opportunity to appear before you today.

Before providing a short opening statement, if I may I'd like to thank those in advance that are here in support of my confirmation. And I'd also like to let them know how much I appreciate their taking the time to be here today.

I also want to thank those that were kind enough to write in my support, and I can't forget to thank my family members: My daughter, who's listening in on the Internet in San Francisco; my son, who's graduating this weekend from college in Los Angeles; and my parents in Campbell; and of course my wife, who was kind enough to take a day off today and join me and be my moral support. I want to thank her very much for every day.

Being appointed and having the opportunity to serve these past months at the Energy Commission is a tremendous honor, and it's an honor to appear before you in anticipation

and hope that you will be providing your recommendation for my confirmation.

I've worked in the field of energy my entire professional career in developing electric generation resources, conducting research, and serving customers to be more efficient, reduce their costs, and increase the reliability of their electric supply for the last ten years.

I have a diverse background in energy, and I believe my experience affords me the perspective from a customer. I view my appointment as public service, and I've made a commitment to serve the State of California for the next four years, implementing the laws passed by the Legislature, and doing what I consider to be the hard work of implementing the recommendations of the commission and the laws of the state.

When my service is complete, I hope to return to the private sector and to the customer side of the meter.

My wife and I have always felt strongly about the importance of public service. She recently served two terms on the Cupertino School Board, and I currently serve as the President of the Board for the Community Association for Rehabilitation, serving the needs of the developmentally disabled in San Mateo and Santa Clara Counties.

I was surprised to be appointed to the Energy Commission last year, but professionally I was prepared, and personally I was ready and willing.

Since I've been at the Energy Commission, I cannot speak highly enough about the dedicated and experienced staff, the committed and fully engaged commissioners with whom I

serve, and the level of effort to be highly effective in providing energy policy recommendations and ensuring the energy legislation that you provide is enacted.

The leadership of the Legislature in establishing the Energy Commission 30 years ago is not only commendable, but it's provided an example to many states and many countries throughout the world. As one of my fellow commissioners says, the further away he gets from Sacramento, the more highly regarded the Energy Commission becomes.

But there's much that remains to be done in addition to meeting the goals that have been established for energy efficiency, demand response, greenhouse gases, renewable generation, improving air quality, and conserving our resources. We have a number of very challenging issues going forward, and I would just like to mention three.

We're becoming increasingly dependent upon natural gas, a fossil fuel that may soon be in shorter supply in North America.

We've long been over 96 percent dependent upon a single transportation fuel that continues to raise significant geopolitical concerns, and while being the single largest source of pollution and greenhouse gases in the state as well.

And to name a third, we must correct the electric procurement process.

That's the nexus of issues for customers, energy providers, and policy makers who are concerned with meeting our renewable, and efficiency, and demand response goals, and for making sure we have an abundant and affordable supply of

energy.

I'm proud to be a member of the commission, and if confirmed I'll continue in my commitment to the difficult tasks of implementing California's energy policies.

Senators, thank you for your attention. I look forward to working with you and all Members of the Legislature. I'd be pleased to answer your questions.

CHAIRMAN PERATA: Thank you. I have a few.

I've been fortunate enough over the years to have one or two bills signed, and it turns out that one of them that was signed has something to do with what you do.

MR. BYRON: Yes, sir.

CHAIRMAN PERATA: I want to talk to you about 1368, which is setting the greenhouse standard for out-of-state, imported out-of-state power. We're making sure that it's brought in clean.

You have the enforcement responsibilities for municipal utilities. Coal power brought into the state is brought by a Southern California muni, like a small little company down there, LADWP.

How are we doing?

MR. BYRON: The regulations themselves are in their 15-day language period. They will come before the commission at our next business meeting. We've been working diligently on them over the last six months or so, and I think we have very good consensus from all the various parties involved: the municipal utilities as well as the other interested parties.

I think we've got good regulations, Senator. I think they're going to be -- I can't speak for my fellow commissioners, but I think that they will be enacted, and I think that we've done a good job of matching the PUC's standard, and with some slight variations. It's kind of between the way that the Public Utilities Commission is regulating the IOUs and the way they regulate the energy service providers. We're kind of right in the middle there with the way that we've approached the publicly owned utilities.

CHAIRMAN PERATA: So those are in the language period? They're out for commentary?

MR. BYRON: Yes. The second comment period, 45-day language, closed I think a week ago, and we just got them into the final 15-day period.

CHAIRMAN PERATA: How intense I am about this, I didn't even know that.

MR. BYRON: I did forward them to your staff as soon as they were out.

CHAIRMAN PERATA: They never tell me anything.

[Laughter.]

CHAIRMAN PERATA: The other area we've been having lots of discussions, and it's interesting to me that as gasoline prices have gone up, people seem to be adjusting to the fact that it's sort of a fait accompli. And yet, it's just sucking the life out of most families' budgets.

Do you have any prognostications that you'd like to share with us? Not for betting on futures or anything, just to explain to the public.

How do you think we'll fare this summer?

MR. BYRON: Of course, gas prices are, you know, set on a national basis for the most part.

CHAIRMAN PERATA: I'm not blaming you for them. I listen to Lunberg, but I don't think he's so far with that.

MR. BYRON: I understand that there may be some -- some increased production, maybe a one percent increased production in the state in recent weeks, so we could see a little bit of relaxation on prices going forward.

But our demand has continued to increase, so I'm not optimistic that we'll return to the good old days.

CHAIRMAN PERATA: Is your son graduating as a petroleum engineer?

MR. BYRON: Computer science.

CHAIRMAN PERATA: You mentioned natural gas. What's your take on the LNG status in California right now?

MR. BYRON: Well, you know, I harken back to the earlier versions of our Integrated Energy Policy Report, and I believe the last couple of versions, the Energy Commission has made it at pretty clear that we probably are going to need some additional supplies to address some tightness in that market as well in North America.

So, I'm -- we're right in the middle of that process. It turns out we'll probably have a workshop in the next week or two, based upon early results from our forecasting for this next cycle of the IEPR.

Lot of changes have taken place, including the legislation that you just mentioned earlier. We'll probably put

increased pressures on natural gas as coal declines in terms of any new construction or disappears.

We're concerned about the supply in North America. There's certainly a tightness. Production wells in California, we drill more of them, and production's staying pretty constant, but that's only about one-eighth of the natural gas that we consume in California.

So, we view -- we view LNG as another pipeline from the west, and I'm hopeful that we will see some additional LNG entering our system as natural gas.

CHAIRMAN PERATA: What's the biggest obstacle you see in the siting? Is it the potential danger of some terrorists blowing one up, a terminal? Or are there environmental concerns?

MR. BYRON: There are both. I think safety is paramount. The notion of on-shore LNG terminals is probably not going to work very well. And of course the terrorism issue, I think, is going to be ever present with all of our facilities. And pollution, as you know, the gas has to be expanded, and there are different approaches for that, some of which involve creating additional air emissions.

I think the biggest concern is going to be the siting through local agencies and some of our in-state agencies, and the concerns that they have.

As you may well know, a couple -- a month ago the State Lands Commission and the Coastal Commission both voted down the initial off-shore application that we received.

So, siting of these will be difficult in

California. And I think the Energy Commission could play a role in this, and we have. We facilitate a working group, an LNG working group, to try and bring the parties and the agencies together, and we've been doing this for a number of years.

But we really don't have any siting authority for LNG terminals.

CHAIRMAN PERATA: What is the extent of your authority regarding LNG? Do you have it?

MR. BYRON: Senator, I don't believe we have much of any.

CHAIRMAN PERATA: Well, you're only Energy Commission. There's no reason why you should; right?

The last question I have, and I think staff contacted you because I had failed to notify them about it, but it's regarding wind energy, and the guidelines that the commission is developing.

We've spent lots of time looking for alternative energy and renewable energy like wind, and geothermal, solar. I have a sizeable wind farm just east of my district. I know Senator Dutton's got a huge one in his.

The discussion that we've been having is that the guidelines are, first, I think one-size-fits-all. It's a lousy cliche, but it's kind of a general standard. And if you look at the difference between Riverside and the Altamount, visually there's a huge difference.

So, the question then becomes, guidelines, we all know that any time you say things twice or three times around here, it becomes truth. And guidelines have a funny way of

leaking their way into the courts as evidence in lawsuits, some of which are just designed to stop things from happening, shocking at that is.

But I've looked at some of the information, and I saw particularly a biological study about raptors that seemed to me to have been designed to accommodate a point of view -- I can get you a copy of it -- but where field analyses are one thing, and what worked its way into the report were contrary to that.

It kind of reminds me of the old story, "What do the numbers show?"

"What do you want them to show?"

That should remain a joke, not a way of doing business.

I was kind of shocked with that, and all the information gotten through the Public Information Act.

But in the final analysis, the last thing we would want to do here is to shut down our wind industry. And it seems to me that, like anything else, there has to be a balance.

But I would like you to look carefully at that report, those guidelines. I would prefer no guidelines to guidelines that are not based in real science. I have some doubts that these are very scientifically anchored.

And I'd like you also to look at, if you have some problems with the Altamount, where the terrain is much different, I think, from what I've been told over the years when I was in Alameda County, the Board of Supervisors, that's in the district, that you have birds that are rodent-hunting in

the rather fertile area down there; where nothing is fertile in Senator Dutton's district.

[Laughter.]

SENATOR DUTTON: That's Senator Battin's district.

CHAIRMAN PERATA: Even worse. There wouldn't be a rodent worth eating.

[Laughter.]

CHAIRMAN PERATA: So, I would like you to look at those. And I would appreciate, once you take a review of that, that you contact Kip in my office and talk with him about it.

The biggest concern I have is that this is a sizable investment in dedicated areas, and it's been working. You always have the fight over the birds, I know. These big suckers now -- not the birds.

[Laughter.]

CHAIRMAN PERATA: And I can assure you that whatever birds are being lost are coming into my backyard now. The crows are doing nicely.

So, if you'd look at that. I don't know if you even heard about it before I brought it up.

MR. BYRON: I have, Senator. And I appreciate your staff and you bringing it to my attention.

I should also say Senator Dutton brought this to my attention in a letter about two months ago.

CHAIRMAN PERATA: Oh, he got way out in front of me. He has less to do.

[Laughter.]

MR. BYRON: Well, I want to commit to you that I will get back to you if there are draft guidelines that have not yet been brought forward to the commission.

And I want to assure you that we're committed to the full development of renewables, and I can speak for the commission on that issue. We don't want to do anything that impedes the development of renewables going forward.

I haven't really had a chance to look at the guidelines. I did meet briefly with staff this morning on this issue, and I think it'd be best just to assure you that we will look at that carefully.

CHAIRMAN PERATA: That's fine. I wouldn't want you to prejudge it, but I would like to have it looked at.

And I'm so excited that we found an area that you have jurisdiction over.

[Laughter.]

CHAIRMAN PERATA: Any questions or comments from other Members on the dais?

Senator Ashburn.

SENATOR ASHBURN: Mr. President, first let me start with wind power, since that's the topic that was raised by Senator Perata.

The largest wind farm in California, in fact largest wind farm in the country, happens to be located at Tehachapi.

I think you acknowledged that the production of electricity from that very clean facility could be doubled if we had not just the location of more wind turbines, but the

transmission lines to carry the power off the mountain into the grid.

So, what is it that you can do to facilitate not only the expansion of a clean, renewable, desirable energy source, but also the transmission of power not just from wind but all other sources?

MR. BYRON: First of all, we like this competition where you all want to have the larger wind capabilities in your service territories.

CHAIRMAN PERATA: It's what boys do.

[Laughter.]

MR. BYRON: We like that.

Senator, our jurisdiction on transmission is somewhat limited primarily from the -- we can site from the generator to the first point of interconnection.

But I have some good news to report. In recent weeks, we've been -- we've been cooperating extensively with the Public Utilities Commission and the ISO with regard to a rate tariff that was applied to the FERC, the Federal Energy Regulatory Commission. And they just approved, I think two weeks ago, a third category of transmission that will allow transmission to those regions where renewables are being built to be done in stages, such that the new developer doesn't have to incur the full cost all at once. So, I think this is a very positive development.

FERC denied the first application of this last year. And we've been behind that a hundred percent, and so we're very glad to see that development.

We're also interested in being more involved in the siting of transmission. We think what we do at the Energy Commission with regard to addressing environmental issues, working with state agencies and local agencies, is -- is very good. And I think we can help more with regard to transmission siting and bringing that expertise.

SENATOR ASHBURN: And your answer speaks to, and I think Senator Perata alluded to it, the coherence of our governance structure for power in the state. And I invited you to comment on that when we met in my office, a meeting that I think you would agree was contentious. We've both had a couple of days to think about it.

And so, I would really appreciate your candid remarks about the coherence of our energy structure for siting power plants, or expanding wind farms, or biomass, or geothermal.

Within my territory, we have just about all of it, from solar power, to geothermal, to biomass, to wind. You know, we have one-sixth of the land of the state. You can put a lot of things in there.

We also have probably as many natural gas fired power plants as anybody in California, and my constituents are generally willing to have facilities like that.

So the question is, you know, we have a power crisis. We touched on the high price of gasoline, forgetting the fact that people in California, residents of California, are paying in highest electric rates in the country.

MR. BYRON: Yes.

SENATOR ASHBURN: That's inexcusable.

So my question to you is, how can we fix that, and what is the coherence of our structure within government?

Because my expectation is that you not just serve as a member of the Energy Commission, but if the PUC, or the ISO, or somebody else is impeding progress, then it's your job to stand up and point it out.

MR. BYRON: That's a big question, Senator.

There's been some contention between the agencies in recent years.

My approach has been to take -- to take more of a consensus building approach. I've met with all the commissioners. I've at the PUC numerous occasions already, and I've also begun to work more closely with the Independent System Operator to take more of a collaborative approach dealing with the structure that we have.

In terms of the agencies and their overlap, there is -- I think there is still some confusion to a certain extent around the issues of transmission siting within the state. We have some planning responsibilities there. The ISO has some siting authority, at least for the public -- excuse me, for the investor-owned utilities is through the Public Utilities Commission.

We've been very pleased of late. There's been some good movement on approval of transmission lines by the PUC. But I think it's no secret that the Energy Commission has made it clear that we would like to take that responsibility, consistent with the responsibility that we have for siting

thermal power plants throughout the state.

So, I would certainly encourage legislation in that regard, and I believe we've put that in writing, and my fellow commissioners have made similar recommendations in the past.

SENATOR ASHBURN: Do you think you can be a consensus builder and also pointed at the same time in identifying those deficiencies within our governance structure that impede the kind of progress that I think we all desire to be made?

MR. BYRON: Yes, I do.

SENATOR ASHBURN: And I'm still waiting for you to say, "And I will do that."

MR. BYRON: Senator, I -- I believe that my -- my year of service thus far demonstrates that I can do that, and that that's what I plan to do over next four years as well.

SENATOR ASHBURN: Okay, so you said again you can do that. That's different than "I will do that."

MR. BYRON: Senator, I will do that.

CHAIRMAN PERATA: Good man.

[Laughter.]

SENATOR ASHBURN: Finally.

Thank you.

MR. BYRON: Thank you.

CHAIRMAN PERATA: Senator Padilla.

SENATOR PADILLA: Thank you, Mr. President.

Just two areas of questions in topics I'm interested in that you've covered already.

But I do want to come back for a minute to the LNG discussion, your views on that as an element of our resource mix going forward. And I guess the specific question would be, do you believe an LNG terminal can be sited safely somewhere in California?

MR. BYRON: Yes, I do.

SENATOR PADILLA: Do you have any inclinations as now as to which of the current proposals might be a best fit?

MR. BYRON: No, I do not.

As you may know, we only have one that has submitted all the necessary documentation for that, primarily the Environmental Impact Statement.

I don't think we know enough detail about the other potential applicants that are out there. I've seen presentations from them. I've reviewed materials that they've provided in our working group, but I couldn't tell you enough about the details of each.

SENATOR PADILLA: Okay, so without commenting on any specific or pending proposals or applications, what's your criteria? What would be the criteria that you would look at to determine whether something is suitable and appropriate?

MR. BYRON: Well, in my mind there's no relaxation of environmental laws whatsoever for siting LNG terminals. That's a given. Safety of the public is also extremely important, and I think that's why we favor the notion of the off-shore terminals.

In terms of other criteria, I think those that are the most efficient in terms of the expansion of the gas, I

think there's some different technologies that we'll see in future applications that -- that may look promising there as well.

We're also hopeful that the Governor, over the next few weeks, will provide some response on the current application of BHP Billiton in -- in the context of the Deep Water Ports Act that will provide some direction, if you will, to the applicants in terms of what would be expected of them.

SENATOR PADILLA: Okay.

Second area of questions is in the renewable energy discussion. We talked a little about wind already.

I'll ask you to just comment either generally or technology by technology, whether it's wind, whether it's solar, whether it's anything else, on how the development has been going to improve efficiencies of the various technologies that provide renewable energies?

MR. BYRON: Like yourself, I'm an engineer by training, and so I do get wrapped up in the technologies occasionally. I enjoy that aspect of it.

We spend a great deal of money, ratepayer money, if you will, through the public goods charges on research, much of which goes to the development of new technologies and improving efficiency of technologies.

I think clearly wind is a mature technology at this point. Photovoltaics are going to move forward in a substantial way now as increased production to meet the SB 1 Million Solar Roof Initiative. Or, I think we have a shorter version -- shorter name for that now.

And I've also been involved in fuel cell technology development. There's some encouraging things going on there as well in solid oxide fuel, fuel cells.

But the big hitter, I think, in renewable will continue to be wind. As I may have mentioned earlier to you, we're anticipating two applications for certification this year from a developer of Sterling Engines. And this is technology I worked on 30 years ago for a renewable energy company, and we're hopeful that it's matured substantially during that time. But these are for 720, I believe, and 900 megawatt peaking units, both in Southern California Edison and San Diego Gas and Electric service territory. Of course, they'll have milestones that they'll have to meet, and those applications have been delayed until mid-summer, at least for the first one.

But I'm very encouraged by these, and they match up really well with the demand. To a certain extent, that would be the Holy Grail for the renewable industry, to have peaking capacity that matches our peak demand.

SENATOR PADILLA: And to what extent do you both quantify and consider the cost impact on consumers in the balancing of the public's renewables, and at what pace, and which technologies, et cetera?

MR. BYRON: Well, the renewables should be the rebuttable presumption for all procurement going forward. And that's, of course, done through the Public Utilities Commission for most of the ones that I'm discussing through the IOU service territories.

We think that that process should be more open,

more transparent, so that we'll have a better sense of what the costs are. And if utilities aren't picking renewables first, then they should be justifying why those aren't their choices. In terms of the --

SENATOR PADILLA: Regardless of cost?

MR. BYRON: Well, if it -- no, not regardless of cost. If it competes, though, it should be their first choice.

But peaking energy, as you know, is very expensive. And so, these Sterling Engine projects and other thermal projects that we're actually -- I'm sorry -- other solar thermal projects that we're expecting, they are more expensive, but I think they will compete well with the peak power costs.

SENATOR PADILLA: You mentioned that we have significant public dollars invested in research and development.

MR. BYRON: Uh-huh.

SENATOR PADILLA: I don't know how you'd measure it, but are we getting the bang for our buck?

MR. BYRON: The Public Interest Energy Research Program that the state has is a diamond. It really is the -- I worked for ten years at the Electric Power Research Institute in Palo Alto, which is funded by the utility industry on a national basis. And without disparaging my former company, what we have at the state basis really is a wonderful organization. It needs to be watched and guided, and I think it does have sufficient oversight.

I expressed an interest just yesterday, in yesterday's business meeting, for being on the R&D subcommittee at the commission.

It's difficult to measure the productivity of R&D, but I think it is a very good program.

SENATOR PADILLA: Can you at least give us two examples of either innovations or improvements to existing technologies that have wowed you and were made possible by this funding?

MR. BYRON: I would say that there's no specific technology that we've developed as a result of the PIER Program. I could be wrong on that.

But I think of it more as incremental improvements that benefit California as a state. There's research that's been done on transmission and distribution systems that we've benefitted from, but there's also the small grant programs, which we just approved a number of these in yesterday's meeting. These are the $75,000 variety. It's a unique program that even the Department of Energy doesn't have, whereby innovative ideas can get some initial seed funding. And some of those go on to be more successful.

I'm sure you're well aware, in the last 30 years the energy efficiency programs, the research that we've done that have led to improved efficiency for both buildings and appliances has reduced our per capita energy use. I should say it's kept it constant for nearly 30 years. We're the lowest per capita energy user amongst any state in the -- in the nation.

So, I realize those aren't specific examples, but they're general examples, if you will, of the value of the research that we do.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: Anyone in the audience who would like to come and speak in favor of the confirmation?

MS. CHANG: Good morning, Mr. Chairman, Senators.

My name is Audrey Chang with the Natural Resources Defense Council.

I'm here to urge your support of Mr. Byron's confirmation. We have worked with Mr. Byron in several capacities, including during his time at the Energy Commission, and we believe that he has the necessary experience and background in energy areas to be able to capably represent Californians in this capacity.

In particular, his experience in energy efficiency and other energy technologies, as you have heard, I think is particularly valuable to the state right now.

And our experience with him is that he is a very careful listener, and is very willing to consider diverse views, and then be able to also thoughtfully explain his decisions.

So, we urge you to support Mr. Byron's confirmation, and thank you very much for the opportunity to speak before you today.

CHAIRMAN PERATA: Thank you.

MR. SMITH: D.J. Smith on behalf of two clients, the California Large Energy Consumers Association, CLECA, strongly recommends this nomination.

You know the background. You know the expertise. I've been at enough meetings and watched Mr. Byron in action enough to know that he's going to afford and do a great job for this state.

We've got some relatively tough energy siting issues ahead of us. And I think this is the type of appointment that'll help with that.

The other client is Constellation Energy, which owns about a thousand megawatts of power plants in the state, and is in wholesale energy, retail energy, almost all facets of energy. They're in strong support, given his approach to all kinds of technologies. We're going to have to look at everything in the coming years.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. VERCRUYSSEN: Good morning, Chair, Committee Members. My name is Paul Vercruyssen. I'm here from the Center for Energy Efficiency and Renewable Technologies.

Also happy to support Commissioner Byron for this appointment. We work at the Energy Commission on a variety of issues that have come up here in the discussion today: transmission planning; energy efficiency; distributed generation, which he has taken a particular interest in, and we appreciate that; also the wind guidelines as well.

And in all of those instances we found him, as you've heard this morning, I think, also to be very knowledgeable, and a very good leader on this. And we look forward to working with him in the future to develop better coordination and coherence in our energy policies, especially with a lot of the challenges we have going ahead with renewable energy goals, greenhouse gas goals.

It's a very -- it's a tough challenge, and we

look forward to working with him to meet that. Urge your support of the nomination.

Thank you very much.

CHAIRMAN PERATA: Thank you.

MR. LYONS: Senator and Members, Joe Lyons with the California Manufacturers and Technology Association, in strong support of the confirmation of the confirmation of Commissioner Byron to the Energy Commission.

The position of Energy Commissioners is very important to manufacturers in this state. CMTA represents a broad cross-section of types and sizes of the manufacturing and processing industries. And their ability, the ability of manufacturers to compete in global markets, depends on fair and balanced state energy policies, and reliable and reasonably priced energy.

Commissioner Byron is well-qualified for the position, and his background and experience are an asset to the Energy Commission. He has been a leader in a variety of energy-related endeavors, reaching a high level of proficiency and knowledge in this very complex field, some of the issues and matters that the Energy Commission deals with, and just energy in general in California.

He is a wise, and thoughtful, and effective commissioner for the benefit of both California businesses and consumers.

Thank you.

CHAIRMAN PERATA: Thank you.

Anyone in opposition?

Seeing none, so we have a motion to approve?

SENATOR DUTTON: So move.

CHAIRMAN PERATA: Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Congratulations.

MR. BYRON: Thank you, Senators.

CHAIRMAN PERATA: You're on your way. You're welcome to stay for the rest of the show.

[Laughter.]

MR. BYRON: I am missing a workshop right now. Thank you.

CHAIRMAN PERATA: Our next appointee is Lisa Curtis, the Oil Spill Response Administrator.

How are you?

MS. CURTIS: Very well, thank you. Or should I say: I will.

CHAIRMAN PERATA: Yes, open with that.

[Laughter.]

SENATOR ASHBURN: I move the nomination.

[Laughter.]

MS. CURTIS: I'm ready for the show now.

CHAIRMAN PERATA: All right. We can only go down hill from here.

[Laughter.]

CHAIRMAN PERATA: Please.

MS. CURTIS: Well, thank you.

I'm very grateful to have the opportunity to be in front of the Committee today.

I have had the pleasure of serving as the Administrator and Acting Administrator for the Office of Spill Prevention and Response now for a year and eight months. I've also had the privilege of working with many talented, professional, passionate people within the program.

It's truly an honor to have the Governor's confidence for this important position, as the primary authority directing prevention, response, and preparedness efforts against marine oil spills in the State of California.

I've been working for the department for almost 20 years now, and basically went up through my career through the enforcement channels. I started my career with Fish and Game as a game warden in Orange County. So, I happened to be the first department responder when the American Trader tanker released 416,000 gallons in Huntington Beach.

And what I really learned was -- well, actually I was heavily involved in the response and cleanup efforts. And I really saw up close and personal the effects of large scale oil on the environment and wildlife.

So, when OSPR was formed, I voluntarily

transferred into being one of the two game wardens in Southern California for this new program.

And as unprepared as I was to jump aboard those tankers, let me tell you, they were more unprepared for me to jump on board those tankers with a uniform, badge, and a gun.

[Laughter.]

MS. CURTIS: So, the program definitely has grown since its inception and has accomplished a lot in its relative short existence. I think one of the most noteworthy things is receiving over $100 million in damages for restoration efforts. But the enforcement and compliance to the regulations has significantly reduced the number of marine oil spills in California waters.

My field experience, my emergency management background, my experience within the management positions of Fish and Game, and my formal education have given me the essential foundation to lead this program.

As Administrator, I've been successful in implementing many recommendations that were identified in the Department of Finance's 2005 Audit Report. These include developing and implementing a spill tracking database, enhancing our drill and exercise program.

We now have program priorities. I'm working very closely with the managers to align the staff accordingly. And on May 1st, 2007, we just enacted or it became effective our new shoreline protection regulations, which means the environmentally sensitive sites in California are better protected than they have ever been.

Yet, there is a lot of work to do, and I'm sitting here, acknowledging that we must maintain a high level of readiness and preparedness, and continue to explore the best achievable technology to be able to have that best achievable protection.

My leadership style is situational. I personally value relationships, collaboration, and doing what's right.

I am fully committed to this position, and view those challenges as opportunities, and wholeheartedly am committed to working with the Legislature, the Technical Advisory Committee, our department, and the Governor's Office, and the many stakeholders to accomplish these opportunities to ensure that California's coastline remains as protected as well as it can be.

With that, I hope I'm ready for your questions.

CHAIRMAN PERATA: I'm sure you are.

We've noted that the Department of Finance has said that you have about a $14 million Oil Spill Administrative Fund. And they also note that you don't have enough staff, training dollars, or equipment to do the job.

Is there some way we can help you spend that money?

MS. CURTIS: Actually, this is an amazing position. I've learned that having too much money is not a good thing.

Actually, the audit report was -- misstated it. It was originally $40 million, but we, with meeting with your staff, have been able to identify it's at $15 million.

We are actually waiting for another week to see if there's any budget augmentations. And one of the things in the audit report is working with some of the other agencies that are also funded by the Oil Spill Administrative Fund to identify any other needs.

So, I took the recommendation of the Technical Advisory Committee and did not decrease the regulatory fees.

And this is definitely one of our action commitments throughout the next year, to try to see what our -- where we're at, and what our needs are, and bridge any gaps, and go through the process to ensure that we're protected as best we can.

CHAIRMAN PERATA: Do you guess that you need some things that you don't have right now?

MS. CURTIS: One of the areas of concern is the Inland Pollution Program.

CHAIRMAN PERATA: The Governor's doing other things today.

MS. CURTIS: Well, that is actually one of the areas.

CHAIRMAN PERATA: He's selling the Lottery.

MS. CURTIS: We need additional positions for the Inland Pollution Program and having a comprehensive program.

There's a lot of other things missing, which is actually -- it's a delegated responsibility from the department, which makes sense, that we deal with those issues of pollution in the inland waters because of several different facets of having a comprehensive program. But definitely there we need

statutory authority, and a whole slough of things, fines and penalties, and positions, to be able to take care of those spills because that's where we're seeing a number of spills: 85 percent of our spills are in the marine -- excuse me, in the inland environment. But they're not only oil. They're chemical, pesticide, other -- other related things.

CHAIRMAN PERATA: Your predecessor spent sometime talking about the aging pipelines.

MS. CURTIS: Yes.

CHAIRMAN PERATA: How are those going?

MS. CURTIS: The State Fire Marshall assured me that there is improvement. That was one of the first things I did with becoming Acting Administrator, is go over there and meet over there. That's their jurisdiction.

So, we continue to work closely with them, and go there to try to identify if they need additional needs to ensure the safety of the pipeline.

CHAIRMAN PERATA: Do you have those cop-firefighter tensions?

[Laughter.]

MS. CURTIS: With the State Fire Marshall?

CHAIRMAN PERATA: I watch "Rescue Me," so I know what it's like.

[Laughter.]

MS. CURTIS: Well, I believe you'll probably have Kate up here before too long, since she just got appointed. Ask her probably.

CHAIRMAN PERATA: Anything from other Members?

Alex.

SENATOR PADILLA: We talked about the resources. I'm very excited to support the Pro Tem's commentary on how can we help you spend your money. Because whether the figure is 15 or the figure is 40, or anywhere in between, it's obviously not an insignificant amount.

To me, through the course of Rules Committee and this confirmation hearing, or through budget requests, or need for augmentation, we can do a little bit better there to support the cause and the effort.

Aside from just funding, aside from just more money, and aside from just more personnel, are there any changes to strategic planning, or drills, or tactics that can help you do a better job?

MS. CURTIS: That's one of the hopes -- the areas that drills and exercises, we're hoping to increase our augmentation. And as I mentioned before, the numbers of marine spills have significantly decreased, but one of the ways to facilitate maintaining readiness is to have our internal staff participate more in those drills and exercises. So, with that program, having more of a comprehensive look, and doing some things with our database and linking, we're hoping to be able to increase.

And that is definitely one aspect of our strategic plan, the attendance and participation within those drills and exercises.

SENATOR PADILLA: With the previous appointee that was here this morning, you heard some questions about LNG

I know here, too, your scope would be limited in that discussion, but you're a part of that discussion.

Can you comment on what your role would be if the state were to more seriously entertain developing LNG infrastructure along the coast?

MS. CURTIS: We do have folks involved with the siting issue from traditional Fish and Game.

But as far as OSPR's jurisdiction, the LNG tankers would fall within our jurisdiction. They fall under our nontank definition, which is they're larger than 300 gross tons.

But our position is that environmentally, they're very -- they're very sound. They operate off their off-gases, so they fall within the requirements because of any small quantities of fuels they have on board, and as such, they're required to have contingency plans and be able to address prevention and response efforts for any spills of oil.

SENATOR PADILLA: So, you say they're safe and environmentally sound.

MS. CURTIS: Did I say safe? I hope I didn't say safe.

We're focusing on the impact --

SENATOR PADILLA: We can play back the tape, if you'd like.

MS. CURTIS: -- to the environment.

SENATOR PADILLA: So obviously you've done some homework in this arena. Without getting too technical, can you just elaborate a little bit more, and maybe comment on LNG vessels versus traditional oil vessels in terms of safety,

potential environmental impact, security precautions, potential for disaster, et cetera?

MS. CURTIS: I'm not -- I'll make this statement. I'm not an engineer, first and foremost.

But, you know, our concern is really impact to the environment. So as safety aspects, I don't believe I'm qualified, but I will tell you that we have our five statewide Harbor Safety Committees of experts that have appointees from myself that have that maritime and port experience.

And it was Mr. Tamminen that had a proposal, a request from our LA-Long Beach Harbor Safety Committee a few years ago to assess the risks involved with the LNG tankers. And their -- their conclusion was that it did not pose any greater risk than any other tanker that has hazardous materials on board.

And they will continue to look, you know, case by case. As these proposals go forward, they'll be intimately involved in those.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: Anyone here that would like to speak in favor of the nominee?

MS. ADDASSI: Good morning. My name is Yvonne Addassi, and I'm currently a staff environmental scientist at the Office of Spill Prevention and Response. So, I work for Lisa.

But here today --

CHAIRMAN PERATA: That's not why you're here.

MS. ADDASSI: No.

I also am on the Board of Directors of the California Association of Professional Scientists. So as you know, we represent nearly 3,000 state employees working over 30 different agencies. And our primary role is for the protection of public health, safety, and the environment.

And we are quite familiar -- it's hard for me to call her Miss Curtis since I know her as Lisa -- I've worked with Lisa personally for probably a decade or more now. She's been with the department for Fish -- for OSPR for at least that long.

And recently, several members of the CAPS Board of Directors was able to meet with Lisa and talk to her about sort of our concerns having to do with things within OSPR, and movement of scientific issues. And I think with her long history at OSPR, and with her ongoing relationships that she's developed with scientists over time, that she has -- she can be expected to further enhance sort of the tradition of what we've been able to do within OSPR.

CHAIRMAN PERATA: You're a scientist. I'm surprised you can talk at all.

[Laughter.]

MS. ADDASSI: I'm usually much better at talking than this. I'm sorry.

So, we're excited to have Lisa here. We're excited to have somebody who has a long history not only with Fish and Game, but who's actually gone out and worked oil spills with us, because sometimes, as you now, it's not always easy to get somebody who has the big picture but has also hit the ground

running.

So, we're excited to have her, and we hope that you will support her.

CHAIRMAN PERATA: You're a marine biologist?

MS. ADDASSI: I am actually just an ordinary ecologist.

CHAIRMAN PERATA: Just an ordinary --

MS. CURTIS: You're not an ordinary.

CHAIRMAN PERATA: I don't want to break up this love fest.

[Laughter.]

CHAIRMAN PERATA: Thank you very much. Appreciate it.

MR. WHEELER: Good morning. Thank you for giving me an opportunity to speak on behalf of Lisa Curtis.

My name is John Wheeler. I'm a game warden, and I'm representing the California Department of Fish and Game, the Wardens Association.

The California Department of Fish and Game Wardens Association fully endorses the confirmation of Lisa Curtis as OSPR Administrator.

With Lisa's intimate knowledge of law enforcement, in particular wildlife and environmental law enforcement, we believe Lisa Curtis is the best candidate to ensure appropriate protection of our natural resource.

In addition, Lisa's career as a state employee from the ground up, including her time as a state game warden, gives her the ability to understand issues and challenges for

the field personnel.

Once again, the California Fish and Game Wardens Association fully endorses Lisa.

CHAIRMAN PERATA: Thank you.

Anyone further? Anybody in opposition?

Do you have any family here?

MS. CURTIS: Does anybody want to adopt me?

[Laughter.]

CHAIRMAN PERATA: It's so sad. Here he comes. You shot like out of a cannon.

[Laughter.]

MR. FLAHERTY: Good morning. I'm Doug Flaherty. I'm President of Planning and Training Solutions, Incorporated in Yorba Linda. We write oil spill contingency plans for the major oil companies.

But I know Lisa's mother wasn't able to be here today. But we all know that May is the month that honors women, May 13th being Mothers Day. So, I would like to encourage the Committee to give Lisa's mother a great Mothers Day present --

[Laughter.]

MR. FLAHERTY: -- and confirm her as the Administrator for the Office of Oil Spill Prevention and Response.

Thanks.

CHAIRMAN PERATA: That would be kind of gratuitous, don't you think.

[Laughter.]

CHAIRMAN PERATA: We only work on the merits,

sir. I want you to know that.

[Laughter.]

CHAIRMAN PERATA: Thank you, and thanks to

Unless you have anything future, ask for an Aye vote?

SENATOR ASHBURN: So move.

SENATOR PADILLA: I'll move it.

CHAIRMAN PERATA: We have lots of people moving it.

Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

CHAIRMAN ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: We're going to leave the roll open so that Senator Dutton can cast an affirmative vote as well.

[Thereafter, SENATOR DUTTON voted Aye, making the final vote 5-0 for confirmation.]

CHAIRMAN PERATA: Congratulations.

MS. CURTIS: Thank you very much.

CHAIRMAN PERATA: And Preston DuFauchard, who

wins the name contest today hands down.

[Laughter.]

CHAIRMAN PERATA: Do you read any of the Easy Rollins mysteries?

MR. DU FAUCHARD: I have not read them, no.

CHAIRMAN PERATA: There is a character in there that's got a remarkably close name to yours, and I mean character.

Please, sir.

MR. DU FAUCHARD: Good morning, Mr. Chairman and Members of the Rules Committee.

My name is Preston DuFauchard, and before I begin opening with my opening remarks, I would like to thank my wife for joining me on the ride up from Oakland today.

CHAIRMAN PERATA: Welcome.

MR. DU FAUCHARD: And my staff for being here and supportive of me.

For the past eleven months, I've served as the Commissioner for the Department of Corporations. The department regulates many household and small business financing arrangements. Specifically, the department regulates broker-dealers, finance lenders, payday lenders, mortgage bankers, and franchises.

The department has three principal program divisions: the Securities Regulations Division; the Financial Services Division; and the Enforcement Division.

I've not worked in government before. This is my first time in government, so I'd like to thank the Governor for

appointing me and indulging my commitment to public service, because I have tried to find a way to engage in public service at various points along my career.

I started my career practicing law with a large San Francisco law firm. I was a trial attorney there. I tried small cases, I tried large cases, and I argued appeals.

In 1997, I joined the Bank of America legal department in the litigation group, where I was responsible for representing the bank in cases involving the banking operations, involving broker-dealer arbitrations and investment banking cases. In each of these jobs, I was responsible for essentially problem solving, gathering information, analyzing that information, and using my judgment to come up with the best solution.

On top of that, especially while in-house at the Bank of America, I was responsible for making sure the problem wasn't systemic. If it was a problem that was systemic, it was addressed accordingly. And I believe this skill set is one that has prepared me well for becoming the Commissioner of the Department of Corporations.

In my first few months at the department, I conducted evaluations of the department's operations with three main areas of focus. One was, what was the department doing to protect consumers.

The other was, what was the department doing to serve its business partners effectively.

And the third was, what areas did the department need to make sure its staff had adequate resources.

In the first consumer protection areas, one of the things that I mentioned in response to the written questions was, I recognized that we weren't handling complaints quickly enough. We weren't processing them quickly enough. So, I established an interdepartmental unit to process complaints.

I did tell you we got the response or the processing time down to three days from the time we received the complaint. What I didn't say in the written response is that at the time I joined the department, we were not responding until 30 days out.

One of the things that we've been doing to get ahead of the complaints, to reach out to consumers before there are complaints, is putting on seminars, investment education seminars, for seniors, for members of the military, as well as what we've been seeing as some affinity fraud. So, we've been getting out, trying to address communities where affinity fraud may take place.

As far as serving its business partners, one of the things that we've done was, we've looked at our regulations. We've streamlined our regulations, specifically in the Securities Regulation Division, to make sure they were consistent with SEC and NASD regulations so businesses could have some efficiencies, and there were no traps for the unwary. We've provided seminars for small businesses, particularly investment advisors and escrow companies so that they could know what we expected of them when we did our examinations, and hopefully, we could conduct more examinations quicker.

On the area of, you know, what the department

needs, as I mentioned in my response to the Rules Committee questions, I think the department's most prominent need is a data management system, and a more robust data management system.

One area that I would like to address is an area that has come into focus after having met with some of the Members of the Rules Committee, and that area involves payday lending. I recognize that the department has not provided the strength of oversight in this area that the Legislature has expected. And I commit to you and to myself that I will strengthen our oversight of this industry.

I have announced to the industry that we plan on migrating some of the enforcement techniques into the examination process. That's so that examiners can issue citations at the time they find violations. I expect this to be in place by the end of June.

In addition, I plan to dedicate one enforcement attorney to the payday lending area. We're considering additional staffing as part of the May Revision to the Governor's budget.

I also continue to plan with -- continue to work with industry groups, consumer advocacy groups, and the military to identify potential issues.

And then the last thing is that I plan on is making the administrator for this area of the law report directly to me.

So, that's my opening set of remarks, and I'd be happy to answer any questions.

CHAIRMAN PERATA: Thank you.

Obviously, we've spent sometime talking in my office with you and your staff.

The payday loan, I mentioned earlier that once in a while I get bills signed. This is the second one I had signed. So, this is a fortuitous thing for me.

This has been like a career on this issue. In part it's because of where you and I both live there's a proliferation of those. It's been one of those few occasions where you have a confluence of desperate and disparate parties, inner city people and military. So, we've heard a lot, and this has been a high priority issue for the military over the years.

The original bill that I carried would have capped the APR at 36 percent, and it's now running at 400. There have been more stories of late nationally about the egregiousness of the way these businesses operate. So, your remarks are well timed.

I have some specific questions and concerns that I want to put on the record, because what I intend to do is to give you a month or six weeks to have a more formal presentation of what you just said, and then come back and discuss that with you. Because this is, as I said, if it's nothing more than the perogative of the Chair, an opportunity to have somebody to work with on this is rare, so I see this as a partnership.

When we finally ended up with legislation, we focused on a couple of things. There are licensing and enforcement here. And one of the issues was to have a study conducted that would give us a guideline for recommendations for

future legislation. That was sort of the compromise with all these parties.

So, it came to my attention that the study is moving forward, but that there isn't or hasn't been a provision to include consumers in the study.

What's the status of that?

MR. DU FAUCHARD: We have put out an RFP to engage a third party, to contract with a third party to do a consumer study. And I think that's the best solution, frankly. The department would not be the best entity, I think, to do the consumer study. I think a third party would be better suited. They would have the appropriate statistical people on staff to do that and design a consumer survey appropriately.

So, that is moving forward.

CHAIRMAN PERATA: So you've got an RFP on the street?

MR. DU FAUCHARD: It's on the street. We -- we have met with some of your staff members and others, and we may tweak the RFP after meeting with them just a little bit, but it's out there. And I think the amendment should be out in the next couple of days.

CHAIRMAN PERATA: Do you anticipate that since the report to the Legislature is due in December, that this will give you enough time to integrate that into the final recommendation?

MR. DU FAUCHARD: Probably not. I think they're going to have to be stand-alone. Our report is due December first, and I don't think that the contractor we ultimately

engage with would have enough time to get their work done before the end of the year.

CHAIRMAN PERATA: I don't know if this was on your watch or not, but how did that happen, that the consumers -- to me, this looks like an afterthought, "Oh, by the way, there's the other half of the study."

What was the thinking that went into that? Do you know?

MR. DU FAUCHARD: Unfortunately I don't know.

When I came on board in June of last year, there was no discussion about a consumer study. I read the statute, and it was the Commissioner's work in terms of getting demand and everything. And then some consumer advocacy groups, who are members on our advisory committee, said, well, we believe a consumer survey -- actually, they thought that consumer information should be gathered through the licensees from the department. And that really, I didn't see that really working very well.

It wasn't until I want to say December of last year, when I got a letter from you and Senator Machado, that there was a suggestion that we have a third party do this. That seemed to me to be a much better alternative. And then -- so we agreed to engage in a third party and sent out the RFP. Unfortunately, it takes a little while to get the contract engaged.

But unfortunately, I don't have an answer as to why this was an afterthought. I think the direction that I had been provided when I took over was that this report is due; this

is the statute that we need to make sure we comply with.

CHAIRMAN PERATA: Well, you're really lucky because the person who headed this effort on the light side of this has now come over to the dark side. She's working in the Pro Tem's Office, Shelley Curran, who happens to be in back. It's one of those rare opportunities where I actually have somebody that knows what they're talking about working with me on a subject that I care about. So, seeing her as your partner --

MR. DU FAUCHARD: Yeah, she has been very helpful as well as Senator Machado's consultant, Eileen Roush. They've both been very helpful to us, and we had a meeting last Friday to go over some additional issues to be addressed in the RFP.

CHAIRMAN PERATA: Good.

On the enforcement side, let's talk a little bit about what we talked about privately. We have some 2500 stores, 400-and-some-odd licenses, and we have 7 auditors.

Now, you've asked for more auditors. Do you hope they'll show up in the May Revise?

MR. DU FAUCHARD: I can only hope, yes.

CHAIRMAN PERATA: Well, we might give you a little hand with that.

These are all fee-driven; correct?

MR. DU FAUCHARD: Correct.

CHAIRMAN PERATA: So, it's not like we're taking food out of children's mouths to do this.

Just as a matter of doing business, if you look at those things from ten feet away, it looks like this is a low

priority. You know, if you had seven cops in an area where you had a high crime rate, and people would say, "What the hell are you doing?"

I don't know what's adequate, but if there's a two-year cycle on this stuff, and we talked about I'd like to have some specificity. Not now, but when you come back here.

MR. DU FAUCHARD: Right. And I think just in terms of our plan, as we flesh it out better, we have -- you're right. There are about 2500 stores; 24 companies own about 1500 stores. Those are the big companies that we would fully expect to drive down compliance so that they are not misbehaving, if you will; that disclosures are adequate; that the stuff that can be fixed easily can be fixed easily. The stuff that we need maybe to work on, we can get them to work on it.

And so, I think in going forward, we have, you know, some focus, some better focus of where we really need to devote some of our attention at the examination and enforcement staff level.

CHAIRMAN PERATA: Well, one of the things that had come up, my predecessor, when we were going through this, characterized the industry as loan sharks. He knew much more about that than I did, on the receiving end, I believe.

[Laughter.]

CHAIRMAN PERATA: But while there may well be a necessity for loan sharks, I was persuaded after having done this for awhile, that there are legitimate consumer needs here. So, I don't want to drive people from a community, you know, the same way that you have some corner stores that sell liquor that

abuse, and some that don't.

But I would want to make sure that in dealing some of the larger ones, the ones that own multiple stores, some of the most cantankerous and cranky and obstinate people that came forward were representatives from those. They might need to be watched or have their asses kicked. I would give you a hand.

But I also know that you can have the little guys. Some are doing good work, and some, if they're not being watched, just stray.

So, I don't know how you deal with that, but then again, the Governor didn't appoint me. I tried. I wanted a real job.

[Laughter.]

CHAIRMAN PERATA: Let me ask you then, there was also some suggestion that the first round, maybe it would be kind of a wave rather than a spanking?

MR. DU FAUCHARD: Yeah.

As I understand it, the way -- when the industry came into the jurisdiction of the department, the initial focus was really in two areas. One unlicensed activity, which we seem to have cleaned up. There are a few on the Internet, which is an interesting distribution channel for fraud and other things.

And the other was over-charges, which, for the most part, we're successful in getting those over-charges refunded.

And then, to use our examination staff as an effective channeling mechanism, if you will, to channel

conduct. During the examination, if the -- if there's something wrong in the contract, get the company to send us a new contract with the corrections made, rather than automatically citing them.

Now that everyone has gone through that cycle, the plan apparently all along has been to take more of our enforcement techniques into play, which is where we are now.

CHAIRMAN PERATA: Senator Padilla had a couple of questions.

SENATOR PADILLA: Just continuing on the enforcement side, a question about the industry, because I really don't know and I failed to ask you this when we met privately.

You said there's 24 companies that own about 1500 of the stores, roughly?

MR. DU FAUCHARD: Yes.

SENATOR PADILLA: Are they all company-owned stores or are there franchises?

MR. DU FAUCHARD: They're all company-owned stores. I think we actually -- one of them tried to get a franchise license, but I think they're all company-owned stores.

SENATOR PADILLA: And second, I appreciate some of the statistics you got back to my office in terms of enforcement actions.

MR. DU FAUCHARD: Yes.

SENATOR PADILLA: So I have some numbers for 2005, 2006, 2007, some civil cases, some administrative cases.

I was just curious. As part of context, what I

don't have on this is, these are cases or violations found based on 10 inspections, 100 inspections, 1,000 thousand inspections that were conducted? I need some context.

MR. DU FAUCHARD: You want to know how many stores we visited, or how many examinations we did, total?

SENATOR PADILLA: Right. Otherwise, I don't know if the violation rate is, in any particular category, is it eight out of ten, or is it eight out of a hundred?

MR. DU FAUCHARD: Right, right. And I think just for clarification, Senator, the information that we sent to you is information from our Enforcement Division. So, those are actually cases brought by our Enforcement Division, or cases where we revoked the license summarily for failure to pay a bond, or something like that.

The character of violations that we know really happens at the level of our -- in our examination area. So, the character of examinations, and the types of violations we see -- if this is answering your question, sir -- is things like not having evidence of the check, or things like not having the sign posted or the department's number posted.

And the number, total number of stores we've visited to date is about -- about 700.

So, I'm not sure if that's the kind of statistical information.

SENATOR PADILLA: That's 700 year to date?

MR. DU FAUCHARD: From inception.

SENATOR PADILLA: From inception?

MR. DU FAUCHARD: Yeah, stores.

SENATOR PADILLA: Out of --

MR. DU FAUCHARD: Out of 2500 stores.

SENATOR PADILLA: -- that exist out there.

MR. DU FAUCHARD: So, we've visited all of the companies, but not all of the locations. That's part of -- part of why we're asking for additional staff.

SENATOR PADILLA: And the bigger company you get, I think, the more important the individual store operations --

MR. DU FAUCHARD: Yes.

SENATOR PADILLA: -- become, because it's easier to hide when you're inside that big, big company.

So, we also talked in my office about jurisdiction and authority issues. You have obviously the payday lending in your portfolio.

Remind me here publicly, as far as those establishments who engage in check cashing, is that in your portfolio?

MR. DU FAUCHARD: It is not, although a lot of payday lending stores own check cashing operations, or money transmitter operations.

The check cashing operations fall within the Department of Justice.

Before Senator Perata wrote his bill to bring payday lenders over to the Department of Corporations, they were also within the Department of Justice jurisdiction. So, those stores came over.

The check cashing stores stayed with the Department of Justice.

Money transmitters is with the Department of Financial Institutions.

SENATOR PADILLA: That was my next question, what about those who are involved with transfers and remittances, domestically and foreign?

MR. DU FAUCHARD: Yeah, those are with the Department of Financial Institutions.

SENATOR PADILLA: So what does that mean for enforcement and oversight?

MR. DU FAUCHARD: I mean, we enforce an oversight -- our enforcement and oversight I guess in many respects would be limited to the payday lending operations at that location, and doesn't occur to any ancillary businesses that may be owned by --

SENATOR PADILLA: If you have a sense, what percentage of stores involved with payday lending also are involved with either check cashing and/or transfers?

MR. DU FAUCHARD: I don't know. I don't have any statistics on that.

I do know that a fair number of stores that are engaged in payday lending are also engaged in check cashing.

SENATOR PADILLA: I hope to see any statistics you have in that category as well, so I'm glad we're going to get a second bite of the apple.

I can just tell you from driving around in my own district, it's more often than not they're involved with multiple activities.

MR. DU FAUCHARD: I would have to get that from

the Department of Justice, but I'll be certainly happy to ask. And if I can get it, I'll give it to you, absolutely.

SENATOR PADILLA: I'll reserve my questions for the next go around.

CHAIRMAN PERATA: Gilbert.

SENATOR CEDILLO: He is coming back.

CHAIRMAN PERATA: Yes. He's going to do a report and come back.

SENATOR CEDILLO: I'm just interested on how you distinguish the treatment we have for people in the military and for people who are civilians. Why do that? What's the advantages?

MR. DU FAUCHARD: Yeah.

What came to my attention, I had never worked with anyone in the military over this issue, and I was the co-chair of the Military Protection Task Force as a result of an Executive Order the Governor signed last August.

And the difference between the military members and the civilian members, even though they may have demographic, you know, similarities, people who are in the military cannot be deployed for combat if their debt-to-income ratio gets beyond a certain point. So, and that's a real issue for the military in terms --

CHAIRMAN PERATA: That would be a great way to avoid combat.

MR. DU FAUCHARD: Well, interestingly enough, the people tell me that they don't -- there's no intentional -- there is not intentional actions taken by military members to

avoid combat as a result of that.

CHAIRMAN PERATA: It's nice to know the creditor is being protected.

MR. DU FAUCHARD: Well, the objective makes sense, once someone explained it to me. The objective is that you don't want to have someone who is in a stressful financial situation working around live ordinance because that puts themselves and their other troops members at the potential risk of severe bodily harm.

So, that's why their situation is more acute than the civilian situation. It really is a function of --

CHAIRMAN PERATA: And we're not winning that war. It's amazing, with thinking like that.

[Laughter.]

MR. DU FAUCHARD: And since we are in a time of war, they obviously need as many deployable troops as they can get.

SENATOR CEDILLO: Why don't we have comparable templates, limits, for civilians? What are the limits?

MR. DU FAUCHARD: For the military? This type of transaction would be forbidden under the John Warner Defense Reauthorization Act. There is no longer permitted the transaction where you take a check as a deposit for a loan.

It's not the 36 percent; although I understand from the industry that that would have effectively put them out of business. There is a 36 percent limit on other types of loans.

But effectively, this type or this style of

transaction is totally now excluded from -- is prohibited.

SENATOR CEDILLO: Okay.

SENATOR PADILLA: One other question that I won't save for the next go around.

Part of the materials provided to the Committee included the Form 700, or the same form a lot of public officials are required to present, financial disclosures, et cetera.

So, we talked about how you deal with conflicts of interest, given investments you have personally, with the responsibilities for oversight and enforcement and regulation in this capacity?

MR. DU FAUCHARD: Yes.

We set up a system when I first took office to exclude me from a number of types of matters. Specifically, anything that came to the department that was related to Bank of America, my former employer. As a result of federal preemption, it's unlikely I'm going to get anything from Bank of America.

Although, I did -- I do sit on the CIDFAC, California Industrial Development Council. And so, I have had to abstain from votes involving cases where Bank of America securities may not have been the -- come before CIDFAC but they prepared the papers.

So, I fully acknowledge, and it's really a self-reporting thing. There is -- and I don't want to get into the detail too much -- but there was situation. We were following from our Securities Regulation Division side one company being acquired by another company, and we were looking at whether that

company -- one of the companies actually lied to the department in connection with some of their papers.

There's a subsequent acquisition that's going to take place involving a company that I have some investments in my retirement account in, so I have to be excluded from any consideration of whether we take enforcement action, and what that may be.

So, those are the types of systems that we've set in place.

SENATOR PADILLA: We can discuss this further over the next couple of weeks, or couple of months, whatever the turnaround time is going to be.

But clearly, it would be a concern at least of mine, if not the entire Committee, that because of these investments, your ability to do the job, not just on the regulatory side or the rule making side, but on the enforcement side not be compromised.

MR. DU FAUCHARD: I understand that, yes.

SENATOR PADILLA: Whatever mechanisms that have been established, the terms you used a minute ago were a self-reporting system, if you will. And if that judgement and that decision comes from you, or as you mentioned in my office, legal counsel bringing it to your attention --

MR. DU FAUCHARD: It's legal counsel.

SENATOR PADILLA: -- and making a determination, what mechanisms do you have in place to ensure? That is important.

MR. DU FAUCHARD: Okay. Yeah, legal counsel does

bring it to my attention, if I don't -- I don't bring it to theirs.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: Do we have anyone here who would like to speak in favor of the nominee?

MR. EGAN: Mr. Chairman, Tim Egan. I represent the Escrow Institute of California, which is the trade association for the DOC licensed escrow companies, roughly about 650 strong.

We're here to recommend your favorable consideration for the confirmation of Mr. DuFauchard. He has been an extraordinarily easy person to reach as a regulator. It's a breath of fresh air to have the opportunity to work with the Commissioner.

There's a requirement that we have an Escrow Law Advisory Committee, that the department and the industry get together every quarter to kind of dialogue and discuss issues of mutual concern. And Mr. DuFauchard's been the first Commissioner since that has been in play or in law for the last 12 years that has actively participated with our industry group.

Greatly appreciate the outreach and transparency that he has brought to the job, and again recommend his confirmation.

CHAIRMAN PERATA: Thank you.

Anyone further? Anybody in opposition?

Seeing none, what we will do is, and you have about a month before you expire. My intention is not to have

you expire. But in the next couple of weeks, if we can work with you to kind of tighten up some of the things that have been discussed, with an eye towards having you become a very strong advocate in this area, that's what we'll do.

You may be the only person I've ever seen who went from anthropology to law.

MR. DU FAUCHARD: It was actually legal anthropology.

CHAIRMAN PERATA: Really?

MR. DU FAUCHARD: The study of different conflict management systems.

CHAIRMAN PERATA: Boy, that Stanford University.

[Laughter.]

CHAIRMAN PERATA: You weren't an athlete, were you.

MR. DU FAUCHARD: No.

CHAIRMAN PERATA: So, Nettie will reset that in the next couple of weeks, and I look forward to the final product.

I intend to carry a bill. So, the work that you're going to be doing will be the work product for that legislation. So like it or not, you're going to have to work with me.

It's great to see you, and thanks for being here.

MR. DU FAUCHARD: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately

10:58 A.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, 2007.

Evelyn Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

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April 30, 2007

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

SUBJECT: Responses to Senate Rules Committee Questions

Dear Senator Perata:

I look forward to appearing before the Senate Rules Committee for my confirmation hearing on May 10, 2007. Enclosed are my written responses to questions posed to me by the Rules Committee. I am available to meet with you or other members of the Committee to discuss these questions or other issues before the hearing. Also enclosed is the latest version of my Statement of Economic Interests (Form 700), as requested.

Thank you for the opportunity to respond to your questions prior to my appearance before the Committee. My entire professional career has been in the energy field: developing electric generation resources, conducting research; and for the past 10 years, assisting end-use customers to be more efficient, reduce costs, and increase the reliability of the supply for their energy needs. I have a diverse background in energy, and believe my customer experience provides a somewhat unique perspective in my role at the California Energy Commission.

As a member of the Energy Commission, I serve on five policy committees: presiding member of the Electricity Committee; associate member of the Natural Gas, Transportation Fuels, and Siting Policy Committees; and associate member on the ad hoc committee on Greenhouse Gas Reduction. I also serve on six committees overseeing power plant siting cases, and, as a member of the Siting Policy Committee, help oversee the review of significant amendments to prior Energy Commission siting certifications. My life's experience in the energy industry and my commitment to public service are well matched to these challenging assignments and the breadth of the Energy Commission's responsibilities.

I hope that my answers below are responsive and informative. If you require clarification or additional information, please do not hesitate to contact me.

Sincerely,

JEFFREY D. BYRON
Commissioner

Enclosure

cc: Nettie Sabelhaus
Appointments Director

Senate Rules Committee
APR 30 2007
Appointments

Goals[1]

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Energy Resources Conservation and Development Commission?*

Given the current leadership from the Governor and the Legislature, this is an extraordinary time to be serving on the Energy Commission. The Energy Commission has quite possibly never had a more full agenda than it does right now, there is excellent coordination among state agencies, and both the Executive and Legislative branches are providing excellent energy policy guidance. I am pleased to say that California is no longer lacking energy policy and I that have joined the Commission at a time when it has developed a strong set of energy recommendations for California. My primary goal is to implement the significant recommendations from the *2005 Energy Commission Integrated Energy Policy Report (IEPR)*, with a particular focus on those issues that fall under my purview in the Committees upon which I serve. As a result, these are some of the key issues that I have been working on since my appointment to the Commission last June:

- Reducing greenhouse gases (GHG) in the electric power sector
- Development of an alternative transportation fuels plan
- Promoting the development of additional renewable power resources
- Improving the electricity procurement process
- Conducting an increased number of power plant siting cases
- Beginning the implementation of the Energy Commission's new responsibilities to designate transmission corridors
- Addressing an increasing demand for natural gas
- Increasing the efficiency of power plants

These are not simply my own personal goals as a Commissioner. These issues and the recommendations to address them are in the *IEPR*.

I believe that I also can make a significant contribution to the effective implementation of the state's energy policy by facilitating productive interaction among the different agencies. Since I've come to Sacramento, I have been impressed by the degree to which various state agencies, with their separate organizations and specific missions, are able to work together. What I've also learned is that this cooperation, which is essential to effective governance, takes time, attention and hard work to make sure it happens. I have made it a priority to actively seek out chances to work with my colleagues at the California Public Utilities Commission (CPUC), the Air Resources Board (ARB), the California Independent System Operator (CA ISO), and also to reach out to the Federal Energy Regulatory Commission (FERC) and Department of Energy

[1] Italicized text is from Senate Rules Committee letter.

(DOE), which can have a major impact on the ability of California to address its energy needs.
I also want to elevate the stature and morale of the Energy Commission to help address real concerns about retention and recruitment. We have dedicated energy professionals who have been at the Energy Commission for 20 to 30 years, many of whom are now facing retirement. I have learned that it is challenging to attract and keep qualified professionals at the Energy Commission due to pay disparities and related issues. Recruitment and transition planning are essential given an increasing work load from legislation and executive orders for the foreseeable future. During the remainder of my term at the Commission, a key objective for me will be to maintain and even improve the quality, reliability, and objectivity of our work so that the legislature can depend upon our results as a source of definitive and accurate energy policy information and recommendations.

I view my time on the Energy Commission as public service. I want to do all that I can during my time on the Commission towards meeting the long term goals of achieving a competitive, sustainable, and cleaner energy future for California.

Renewable Portfolio Standard

The Commission's 2006 Integrated Energy Policy Report (IEPR) Update conducted a review of the CA Renewable Energy Portfolio Standard program (RPS). Among other things, the commission concluded that factors like the uncertainty over availability of supplemental energy payments for eligible renewable energy resources, the complexity of the RPS program, insufficient attention to potential renewable energy contract failures, and lack of progress in re-powering wind generation all were barriers to meeting state renewable energy goals.

2. *Many of these barriers are partly or wholly within the jurisdiction of the CEC to address, or at least to bring to the attention of other energy agencies within the executive branch. What actions have you taken as a commissioner to reduce complexity, create greater certainty over the availability of SEP's, provide assistance or incentives for wind re-powers and the like?*

While I have been less intensely involved in renewable energy issues than in areas where I serve on the relevant policy committee, I have participated in a number of Commission actions aimed at helping address these issues. My most direct involvement has related to transmission planning activities, which I discuss in response to your next question.

I participated in the review and adoption of the 2006 *IEPR Update*, and fully support the recommendations in that report. In addition, in March 2007, I participated in the Energy Commission's review and adoption of updates to the various renewable program guidebooks. These guidebooks address how to certify an RPS-eligible resource, how to

apply for supplemental energy payments, and how the Energy Commission verifies renewable procurement to satisfy RPS-targets. The revised guidebooks were adopted to reflect changes in the law, regulatory refinements, and market developments.
I also have had the opportunity to discuss with Senator Dutton and Senator Battin the Energy Commission's work with the Department of Fish and Game, various local governments, and stakeholders to develop statewide voluntary guidelines to help reduce the impacts of wind development on birds and bats. While this effort was launched before my time on the Commission, I fully support the goal to establish voluntary statewide guidelines that promote the development of wind energy in the state while minimizing impacts on birds and bats. I look forward to the proposed guidelines coming before the Energy Commission later this year, and believe that this effort will be successful.

3. *Please explain the CEC's role in the siting of transmission for renewable energy. What steps have you taken as a commissioner to expedite or facilitate siting of electricity transmission lines for renewable energy?*

The Energy Commission has no direct role in permitting transmission except for lines needed to connect the power plants we permit to the interconnected grid. In 2005, the Energy Commission adopted the *Strategic Transmission Investment Plan,* which identified key transmission projects, including three that would help meet renewables targets. While this report predates my time on the Commission, I support those recommendations, and my responsibilities as presiding member of the Electricity Committee include oversight of the *Strategic Plan* development for the *2007 IEPR* cycle. With the new authority granted under SB 1059 (as recommended in *2005 IEPR* & *Strategic Plan*), the Energy Commission has started developing regulations for designating transmission corridors, which will facilitate future development of transmission for renewables. The Siting Committee, on which I serve, is overseeing the development of those regulations.

While this corridor designation authority is an important first step, more needs to be done to establish a comprehensive statewide transmission planning process. This would provide regulatory certainty in the permitting process and facilitate the approval of needed transmission projects, including those needed to access renewable resources. I support the recommendation from the *2005 Strategic Plan* to collaboratively establish a comprehensive statewide transmission planning process with the CPUC, the CA ISO, other key state and federal agencies, local and regional planning agencies, investor-owned utilities (IOUs), publicly owned utilities (POUs), generation owners and developers, the public, and other interest groups. This process should be designed to:

- Assess statewide transmission needs for reliability and economic projects and support Renewable Portfolio Standard (RPS) goals
- Examine non-wires alternatives to transmission
- Approve beneficial transmission infrastructure investments that can move smoothly to permitting

The Energy Commission and others have criticized the CPUC's process for permitting new transmission projects. I think it is important to note that the CPUC has begun to take actions to address those problems. I have had numerous conversations with CPUC Commissioner Grueneich on this issue, and know that improving their transmission permitting process is among her and her fellow Commissioners' priorities. I also note that two major transmission projects, Devers-Palo Verde 2 and key portions of the Tehachapi upgrades that are important for accessing renewable resources, were approved by the CPUC earlier this year.

Nonetheless, I support the Energy Commission's repeated recommendations to transfer the permitting of all new bulk transmission lines to the Energy Commission, using the Energy Commission's power plant permitting process as the model. Such a move as part of a comprehensive transmission planning process would help ensure consistency between transmission planning and permitting, and would help make for a more streamlined process in the future for bringing new transmission projects online.

4. *With the passage of landmark greenhouse gas emission laws last year, efforts to build new renewable energy, and to displace fossil fuel energy, will have to be redoubled. What steps do you support to accelerate investments in new renewable energy?*

I support the comprehensive set of recommendations for addressing the impediments to near-term development of renewables that were adopted in the *2006 IEPR Update*. These recommendations addressed ongoing transmission barriers, the complexity and need for increased transparency in the RPS program, the risk of contract failure and issues of timely completion of projects, and the need for more progress in wind repowering. I welcome the recent decision by FERC to approve the CA ISO's proposal to develop a third category of transmission projects to accommodate renewable resource development, as was strongly supported in the *IEPR Update*.

The Energy Commission's adoption this past March of revisions to the *Renewables Portfolio Standard Eligibility Guidebook, New Renewable Facilities Guidebook*, and *Overall Program Guidebook* is an example of the Energy Commission's quick response to implement changes in the law and the simplicity and transparency in the Energy Commission's public process. Specifically, the RPS Eligibility Guidebook includes updates to implement SB 107, SB 1250, and AB 2189 which were signed in the Fall of 2006 and went into effect January 1, 2007. The guidebooks were collectively revised in a single proceeding at the Energy Commission.

The revisions to the *RPS Eligibility Guidebook* is also an example of the Energy Commission's efforts to accelerate the program, both by being responsive in a timely manner and also by taking action to broaden the resources available to retail sellers working to meet the RPS obligations. For example, new guidelines were developed to allow biogas generated from dairies and injected into natural gas pipelines to be eligible for the RPS, when the biogas is used to generate electricity.

In terms of other recommendations, the *IEPR Update* provides an exhaustive list and I want to emphasize the following as particularly important:

- Alter the supplemental energy payment procedures to reduce contracting complexity of projects
- Maintain the penalties for utilities that do not meet RPS goals
- Make the RPS process more open and transparent
- Recognize the important value of renewable resources as both a hedge against future natural gas price volatility and a vital component of the state's greenhouse gas reduction strategy in "setting the bar" (market price referent calculation) for selecting renewable projects
- Utilities should be required to accept all RPS projects that meet the market price referent or document why they did not
- Utilities should be required to procure a reserve margin of renewable projects to protect against contract risk in meeting the 20% RPS by 2010
- The state should consider incentives to encourage repowering of aging wind facilities

In terms of the long term RPS goal of generating 33% of the state's electricity from renewable resources by 2020, I note that the Energy Commission is in the process of further evaluating the options for addressing the key hurdles, which include:

- The relationship between renewable energy, renewable energy certificates, and carbon emission trading in implementing greenhouse gas reductions called for in AB 32
- Alternative structures to meet 2020 RPS goals, including whether revised system benefit charge mechanisms or feed-in tariffs would spur additional renewable development
- Changing or eliminating the market price referent/supplemental energy payment award structure

While I was not as intensively involved in developing these recommendations in the *2006 IEPR* as my colleagues on the IEPR Committee, I do support these conclusions and I look forward to reviewing the information being developed in the *2007 IEPR* proceeding on this issue. I will fully participate in the development of appropriate recommendations as the Commission moves towards adoption of that report. I also recognize that legislative interest in these issues may encourage us to develop our positions on possible actions on the legislative timeline. I look forward to further interaction with the legislature on these issues in coming months and years.

Gasoline and Diesel Supply and Demand

The 2006 IEPR also found that the demand for transportation fuels in California is increasing, and that the state's dependence on imports is increasing along with it, producing more air pollution and greenhouse gases. The commission and other sources

now estimate that 41% of climate emissions come from transportation sources. The IEPR also recommended that the "single largest opportunity" for reducing transportation fuel consumption was through what it called "smart growth" which it states would save billions of gallons of gasoline per year.

5. *Please describe what the commission means by "smart growth?" What opportunities exist within the state to promote smart growth policies? Has the commission shared its recommendations on smart growth with other agencies in state government who more directly oversee land use? If so, what actions have they taken to implement the CEC's recommendations? Is the Administration sponsoring legislation to implement the CEC's recommendations?*

As noted in the *2006 IEPR Update,* "smart growth" is the application of development principles that make prudent use of resources and create genial, low impact communities through enlightened design and layout. Smart growth principles aim to maximize residential neighborhood livability, minimize traffic congestion, encourage development in existing population centers, minimize both the costs of living and taxes, encourage efficient use of all forms of energy, and keep existing open spaces open. If successfully applied nationwide, smart growth would lead to improved living standards, millions of tons of annual CO_2 reductions, and hundreds of billions of dollars of annual savings through wide ranging efficiency improvements.

The Energy Commission has done extensive work to support land use planning agencies and organizations that influence land use planning. In the 1990s, the Energy Commission developed and supported a geographic information system land use planning software program called Planning for Community Energy, Economic, Environmental Sustainability (PLACE^{3}S) to help smart growth planning throughout California. In 2002, the Energy Commission upgraded PLACE^{3}S to an internet-based version with improved processing speed and accuracy. This tool allows local land use decision makers to compare potential future outcomes using different growth and land use assumptions. Through the Energy Commission's Public Interest Energy Research (PIER) program, numerous research efforts are currently underway to further smart growth goals.

Numerous local governments, public and investor owned utilities, and non-governmental organizations participate in Energy Commission proceedings to further smart growth. Half of the *2006 IEPR Update* focused on smart growth and the relationship between energy and land use. That report contains extensive examples and analysis of local programs to implement smart growth principles, and ongoing Energy Commission projects in support of those efforts.

While the administration is not currently sponsoring any bills to implement the 2006 IEPR recommendations relating to land use and smart growth, the legislature has taken a interest in this topic. I welcome the legislature's interest in these important issues and look forward to helping craft a solid approach forward.

6. *Last year, the Governor issued an executive order promoting the increased use of clean alternative fuels. The CEC was assigned a central role in implementing that EO. What actions has the commission taken to promote clean alternative transportation fuels?*

The Governor issued Executive Order S-06-06 on Biomass on April 25, 2006, which established bioenergy production and use targets for California and directed the Bioenergy Interagency Working Group to carry out a series of specific actions to promote sustainable biomass development in California, especially biofuels.

The Energy Commission is leading this Working Group, which includes representatives of nine state agencies with important biomass interest. The Governor released California's Bioenergy Action Plan in July 2006, and work is underway to carry out this Plan.

As a member of the Energy Commission's Transportation Fuels Committee I am overseeing our preparation of an Alternative Fuels Plan, as required by AB 1007. This Plan is being prepared in close partnership with the Air Resources Board and will be completed by June 30, 2007. This work is also being coordinated with the efforts underway to establish a Low Carbon Fuel Standard for California, as directed by the Governor under Executive Order S-01-07.

The Energy Commission has supported increased use of clean, alternative transportation fuels since its creation in 1975. Using funds approved by the Governor and appropriated by the Legislature, the Commission has offered millions of dollars in incentives for alternative fuel vehicles and fueling infrastructure. Unfortunately, the State of California lacks a stable and consistent funding source for such incentives at the present time.

Lastly, the Energy Commission's Public Interest Energy Program (PIER) recently expanded to include transportation research, development, and demonstration projects, with funding of approximately $10 million per year. The Energy Commission will focus on projects to:

- Improve fuel-efficient transportation technologies, alternative fuels, biomass and other non-petroleum fuel production, and alternative fuel infrastructure
- Develop strategies to mitigate environmental impacts of alternative fuels
- Develop tools and models to improve transportation systems and understand consumer choice.

Electricity Supply

As the years 2000 and 2001 have shown, California is vulnerable to electricity shortages. Californians still pay, on average, the third highest rates in the nation. While

the commission is currently reviewing applications for 12 electric generating plants, the development of new energy supplies is not keeping pace with the state's increasing demand. The commission has reported that the state's energy infrastructure may be unable to meet the state's energy delivery needs in the near future. In 2004 transmission congestion and related reliability services cost California consumers over $1 billion.

7. *What are your views on what the state and, in particular, the Energy Commission should be doing to ensure an adequate and affordable supply of electricity? Specifically, please address the siting, permitting, and construction of power plants on the supply and affordability of electricity.*

As a former energy director for a large software developer and having consulted for a number of Silicon Valley companies, I understand the dramatic effect that electrical interruptions can have on business operations and product development. Although the situation has improved dramatically since the energy crisis, California's electricity customers may still feel vulnerable to market manipulation and capacity shortfalls. Policy makers must always be cognizant of the unintended consequences of legislation and regulation.

Recent analysis at the Energy Commission indicates that there is sufficient capacity to meet peak electricity demand this summer and the Energy Commission has permitted sufficient capacity to meet forecasted demand. As you know, the Energy Commission is responsible for permitting thermal plants larger than 50 MW. I believe that this process is preeminent throughout the world. However, you may not know that currently over 8,000 MW of capacity that has been sited by the Commission is not being built and approximately 5,500MW of electrical generation is currently in the certification process at the Commission. The lack of long-term contracts, not problems in the permitting process has been the major impediment to construction of new power plants since the crisis. Progress is being made, but I believe that working in concert with the CPUC, the Energy Commission has a role in making the electricity procurement process more open and transparent as we work towards long term contracts and a competitive market that benefits customers.

I also believe that distributed generation is often undervalued in considering new generation. Utilities often only emphasize its impacts on their business interests, but all California customers benefit when private capital is used to invest in highly efficient distributed generation while reducing environmental impact and greenhouse gases. I believe that distributed generation can make a significantly larger contribution in meeting California's energy needs.

The importance of renewable resources to electricity supply cannot be overlooked, as reflected in my responses to your earlier questions. In addition, any discussion of new generation should also include emphasis on the important role of energy efficiency and demand response programs in reducing the need for additional capacity.

8. *Should the underinvestment in transmission infrastructure be addressed? If so, how?*

Over the last decade, transmission owners and operators have faced growing uncertainty in their efforts to deliver reliable, affordable power in environmentally acceptable ways. The historic underinvestment in California's transmission infrastructure is one of the key reasons for ongoing problems in the state's electricity system. This is an issue that requires serious attention. In the context of developing transmission for renewable resource development, I discussed above the state's need for a comprehensive transmission planning and permitting process. While California has taken modest steps in planning and permitting new transmission facilities, the state still suffers from inadequate infrastructure following years of underinvestment in transmission lines. California must continue to improve its transmission infrastructure planning and permitting processes in order to ensure development of a reliable, efficient and diverse transmission system allowing the achievement of RPS goals.

Underinvestment may also be because siting transmission projects is an inherently difficult process in California. Besides public opposition, transmission is not normally built incrementally and large amounts of additional transmission capacity come on all at once. As a result, there is a high initial cost even though this represents a small impact on the cost of service. There are also long planning and approval cycles.

Although I believe that the state would be better served with transmission siting authority resting with the Energy Commission, there has nevertheless been some recent progress with the CPUC's approval of a number of key transmission projects and upgrades. I welcome the attention that the CPUC has paid to addressing the shortcomings in its transmission permitting process. The FERC's recent approval of a tariff for transmission for renewable projects is also a significant step forward.

I will continue to work in cooperation with these organizations and the ISO to ensure that needed transmission infrastructure is built.

Natural Gas Supply

Natural gas has increasingly become the state's fuel of choice for generation of electricity. Several companies have proposed siting new liquefied natural gas facilities in, or close to, the state. At the same time, natural gas prices have become volatile and have more than doubled since 2000. California depends upon natural gas to generate about half of its electricity, even though it is a fossil fuel that contributes to climate change.

9. *Has the CEC recently performed any assessments or studies on the need for increased natural gas supplies, and how natural gas fueled electricity should be*

viewed as part of the state's long term climate goals? If so, what conclusions or recommendations has the commission made?

One of the Energy Commission's most important responsibilities is to develop "*an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets that are essential for the state economy, general welfare, public health and safety, energy diversity, and protection of the environment.*" (Pub. Res. Code §25302(c)). This assessment is completed on a biennial process as part of our IEPR proceeding. The most recent assessment of natural gas supply and demand was incorporated in the *2005 IEPR*, and Energy Commission staff is currently completing a new assessment for the upcoming report. Staff plans to publish a draft assessment in May, which will be discussed at a public workshop on June 7. The final assessment will be incorporated into the *2007 IEPR*, and the Energy Commission will make appropriate policy recommendations at that time based on the updated assessment.

As a member of the Energy Commission's Natural Gas committee, I have been helping oversee the planning and preliminary work on the updated assessment. This is an area where the Energy Commission is actively working to improve our analytic capabilities, and in particular making our assessments more robust in the face of unanticipated events. While the Energy Commission has been extremely effective in evaluating long-term natural gas supplies and demand over the years, our record (like that of most forecasters) on price forecasts has been more problematic.

The Energy Commission staff forecast has traditionally not considered unanticipated events, such as Hurricanes Katrina and Rita in 2005, in its price projections. The staff model is based on market fundamentals that normally drive the supply-demand balance in a well functioning market; this model and other similar ones have a long history of providing reasonably accurate forecasts. Yet, clearly, today's market prices are substantially higher than the staff's forecasted prices.

In recent years, numerous events have driven prices away from a fundamental forecast of future prices. In addition to the hurricanes, price manipulation documented in the Enron scandal and the misreporting of the natural gas price indices are examples of events that make comparing the staff forecast, or any other forecast, with natural gas market prices increasingly problematic. Existing equilibrium model forecasts traditionally relied on by Energy Commission staff and others, do not adequately capture such events in advance with any accuracy, but such events have a very real effect on market prices. The Energy Commission notes that a fundamental forecast may under-represent future market prices.

For this reason, we will augment this year's assessment with an evaluation of alternative assumptions and potential system shocks that have the potential to affect the supply/demand balance in North America and in California in particular, and that could significantly affect the price. This effort is intended to develop a more robust natural gas

assessment that helps stakeholders consider reasonable potential natural gas market outcomes, rather than focusing attention on a single reference case.

Another important piece of analysis being conducted for the *2007 IEPR* is a scenario analysis of alternative resource plans that range from a 'business as usual' case, to a case reflecting aggressive implementation of both renewable resources and energy efficiency throughout the Western Electricity Coordinating Council (WECC) region. This analysis is designed to yield insights about how selected performance measures, such as reliability, cost, and GHG emissions might change across resource cases. This work is likely to provide valuable information on the role of natural gas and other resources in moving toward the state's aggressive GHG reduction targets.

While all of this work is forthcoming and will provide insights that affect the policy recommendations that the Energy Commission makes in the upcoming *IEPR*, I do not want to prejudge the outcome before we even have a draft assessment available for review and comment.

The most recent assessment that has been completed was that included in the *2005 IEPR*. At the time, the Commission found that California's natural gas demand growth was expected to be slower than the rest of the nation's, due largely to the state's energy efficiency programs and the use of renewable energy for electricity generation. Nevertheless, in-state natural gas production satisfies only about one-eighth of statewide demand. This reliance on imports has made the state vulnerable to supply disruptions and price shocks that can negatively affect California's residents, businesses, and economy. New natural gas supplies have been increasingly difficult to find and produce nationally, and the gap between U.S. demand and domestic supplies continues to widen.

Past forecasts projected California's demand for natural gas for power generation to increase more quickly than demand in other sectors. The 2005 assessment, however, indicated that the demand for gas in California's electricity sector was expected to grow at a relatively modest rate of 0.6% per year through 2016, as newly built power plants become operational and aggressive energy efficiency in electricity end uses and higher prices dampen demand. Without the addition of new, more efficient power plants to reduce the state's dependence on older, less efficient generation facilities that use more natural gas, California's dependence on natural gas for electricity generation would have grown much more rapidly. California's aggressive RPS will also reduce the electricity generating load from gas-fired facilities, particularly with the acceleration of the RPS goal of 20% renewable generation by the year 2010.

A part of this assessment of slower growth in natural gas use for electricity generation was premised on the expectation, at the time, that the overall increase in gas prices over the past several years would spark a renewed interest in coal-fired electricity generation. However, current policies in California and other western states on climate change, and the potential for action on climate change at the federal level, are likely to

mean that new coal facilities that were then included in the resource plans for several western states at the time, may not be built. This is likely to affect the natural gas demand for electricity generation in the current assessment.

The Energy Commission strongly supports increased efficiency in the use of natural gas in all sectors, including industrial, electricity generation, residential, and commercial. In addition, implementation of the loading order in the electricity sector, with its emphasis on efficiency and renewable resources, will help reduce our dependence on natural gas in the electricity sector. Because natural gas is likely to continue to play an important role in California's energy portfolio in coming years, we also support finding increased supplies of natural gas to help offset expected continuing decreases in North American production. I also support the call, initially voiced by the Energy Commission in the *2003 IEPR*, for California to support the development of Liquified Natural Gas (LNG) facilities on the West Coast, consistent with environmental protection requirements. We have no direct permitting or regulatory authority over LNG terminals, and so have confined our analysis of specific proposals to comments from our environmental staff on the NEPA/CEQA documents prepared for projects proposed in California.

10. *What steps should the CEC take to ensure that the state does not become over-dependent on natural gas and to mitigate price fluctuations to protect utility customers?*

I have provided a combined response to questions 10 and 11 below.

11. *What actions do you recommend to balance new natural gas supplies with more efficient use of this fuel, greater investment in alternative technologies like solar thermal water heating and the like?*

As mentioned above, California imports more than 80% of the natural gas it uses, which leaves the state vulnerable to supply disruptions and price shocks. For this reason, it is important to increase the efficiency with which we use natural gas, decrease or slow the growing demand for both natural gas and electricity, and increase our supply options. The correct balance will require aggressive action in all three areas.

The loading order establishes a hierarchy of preferred energy resources for California, starting with efficiency and renewable resources, and then moving to clean and efficient new fossil resources. The Energy Commission has a long and successful history on energy efficiency; California's building and appliance efficiency standards are a world-renowned model for reducing electricity and natural gas use.

The Energy Commission's efficiency programs also provide energy audits and loans to local agencies and schools to improve their energy efficiency. The energy audits identify both natural gas and electricity saving opportunities, and the Energy Commission provides loans to implement these opportunities, with repayment from the resulting savings on energy bills. In addition, the building efficiency standards and

appliance efficiency standards are also developed to reduce the need for both electricity and natural gas. Given California's reliance on natural gas as a primary fuel for electricity generation, electricity savings translate directly into natural gas savings.

The Energy Commission's ability to drive continuing appliance efficiency improvements is at times hampered by the potential for federal preemption of California appliance standards. For example, under AB 1561, the Energy Commission is required to establish standards to ensure washing machines sold in California after 2007 use no more than 8.5 gallons per cubic foot of washing machine capacity, subsequently decreasing to 6 gallons by 2010. The Energy Commission must obtain a waiver from the federal Department of Energy (DOE) to enact appliance standards more stringent that those at the federal level. Because DOE denied the Energy Commission's waiver request, the Energy Commission recently filed suit in federal court to overturn the DOE action. The standard, if enacted, would save substantial amounts of electricity, natural gas and water, and would also enhance efforts to curb greenhouse gas emissions.

More needs to be done to encourage efficiency in natural gas-fired electric generation as well. Approximately 17,000 MW of old, inefficient steam turbines remain an integral part of California's electric system. In the *2005 IEPR*, the Energy Commission called for an orderly process to retire or replace those inefficient generators, in large part due to efficiency concerns.

PIER is also supporting research on increasing the efficiency of generators. For example, I was briefed recently on a new technology that has the potential to significantly increase the efficiency of peaking turbines through increasing mass flow within the turbine. Because much of the current need for new generation resources in California relates to our need to meet peak demand, this has a potential to be an important improvement. While research into this technology has been supported through the PIER program, we need to find effective means to help with the demonstration and deployment of new, more efficient technologies.

Another area that has the potential to improve overall system efficiency is through increased use of distributed generation, which can be used in highly efficient co-generation applications, which significantly increase efficiency and reduce greenhouse gases. Prior to my appointment as Commissioner, I developed distributed generation projects and I am familiar with the benefits to the environment and customers. I believe that much can be done to increase the penetration of distributed generation, though action will need to be taken by the CPUC and possibly the legislature to ensure that remaining barriers are addressed. There is support for this among the Commissioners and the CPUC, and I have had discussions with Assemblyman Blakeslee on legislation that he has introduced on distributed generation. The Energy Commission has been supportive of distributed generation for years, and I believe that we have an important opportunity to act this year to significantly reduce greenhouse gas emissions in the electric sector.

The Energy Commission also has an active natural gas research program, which focuses on efficiency. The PIER-NG program is preparing to release a solicitation for research projects for buildings, with identified opportunities including residential and commercial natural gas water and space heating technologies, commercial food service equipment, and gas appliances such as cooking and clothes drying.
While these measures will help moderate demand for natural gas in California, the increased demand across the country and the declining production in North America makes it prudent to seek alternate sources of natural gas. Increased supply options should help mitigate volatility in prices. LNG offers the main alternative, and the Commission is on record supporting development of LNG terminals on the West Coast in an environmentally responsible manner. We have also actively engaged with other agencies that have an interest in possible LNG projects, and have lead the LNG Interagency Working Group since it's formation in 2002.

These actions are all complementary, and are needed to help provide a balanced energy portfolio for the state. While increased efficiency and renewable resources will be critical for meeting that state's GHG reduction goals, reliable and affordable natural gas supplies will also be important over, at least, the next decade as California transitions to a less carbon-intensive future.

Energy Efficiency

Under the Warren-Alquist Act, the CEC is responsible for adoption and enforcement of state energy efficiency building standards and appliance standards.

12. *Are the CEC and the state doing enough to ensure that these energy efficiency standards meet the state's EE and climate goals? Should additional actions be taken to strengthen the state's efficiency standards?*

While my background and experience prior to becoming a Commissioner has a strong energy efficiency component, I am not currently a member of the Commission's Efficiency Committee and so have been less intensively involved in these issues than in other policy areas where I do serve on the relevant policy committee. However, I remain strongly interested in these issues, and hope to become more deeply involved in the Commission's work in this area in the future.

California's building and appliance efficiency standards are a model for the world. California uses less than 60% of the electricity per capita, as the national average. Much of this is attributable to the energy efficiency work of the Energy Commission over the past 30 years. The Energy Commission is now developing an upgrade to the Building Standards that will be adopted in early 2008 and go into effect in 2009. The Commission also intends to begin work in 2008 to develop new appliance efficiency standards. These standards will be important actions towards meeting the state's climate goals.

The Energy Commission is also acting to establish a strong link between energy efficiency and solar, and is working to simultaneously promote both in the Building Standards. Under the California Solar Initiative and SB 1, the Energy Commission has established the New Solar Homes Partnership (NSHP), and adopted the Guidebook for this program in December 2006. This program recognizes the importance of delivering photovoltaics as a mainstream feature of California new housing. In developing the NSHP Guidebook, the Commission built on its long standing relationship with California's housing industry and the tools and methods used for assuring high performing energy efficient homes through the building standards. The Commission also honored the priority placed on energy efficiency in the development of the "loading order" established as state energy policy in the Energy Action Plan, by requiring a minimum level of energy efficiency that exceeds the Building Standards before granting any incentives for photovoltaics. The program also includes, on a voluntary basis, a second more aggressive level of efficiency that results in higher incentives.

Can California do more in this area? I believe we can. My colleague Commissioner Rosenfeld likes to remind me that increasing our efficiency gains remain the most cost effective mechanism available for meeting our climate change goals. Achieving the significant reductions in GHG emissions needed to stabilize the climate will require significant national and international attention on achieving reductions through substantial improvements in the energy efficiency of buildings. The theme of many developing initiatives is that building energy performance standards represents a particularly powerful vehicle for making those improvements. California has been virtually the only state in the U.S. to embrace the concept and establish the infrastructure necessary to deliver building energy performance standards, which have been the focal point of California's standards for almost 30 years. California is in a unique position to realize the GHG emission reduction potential envisioned by such initiatives because of the groundwork it has laid over these years in the adoption and implementation of infrastructure development for building energy performance standards.

In terms of taking additional actions to strengthen the standards, it will be important to emphasize quality over speed and breadth. Part of what has made California's standards the model for the world is the care and effort that has gone into developing those standards. The Governor's proposed budget includes 2 Person-Year (PY) for the Commission's work on standards. These additional resources, if approved, will help strengthen the program. In addition, the Energy Commission is currently using some existing vacancies in other programs to increase staffing levels in the standards program on a temporary basis, though this type of shift always involves difficult tradeoffs.

I welcome the interest that the legislature has shown in the Energy Commission's standards work, and look forward to working with the legislature to ensure that we are able to build upon the past successes of the program and strengthen the program. Meeting California's post-2020 carbon reduction goals is likely to require a significant

increase in the size and scope of the standards program. The Energy Commission is in the process of reviewing these longer terms needs. I personally would support a significant increase in the program in coming years to help ensure that California meets its climate goals in the most cost-effective means possible.

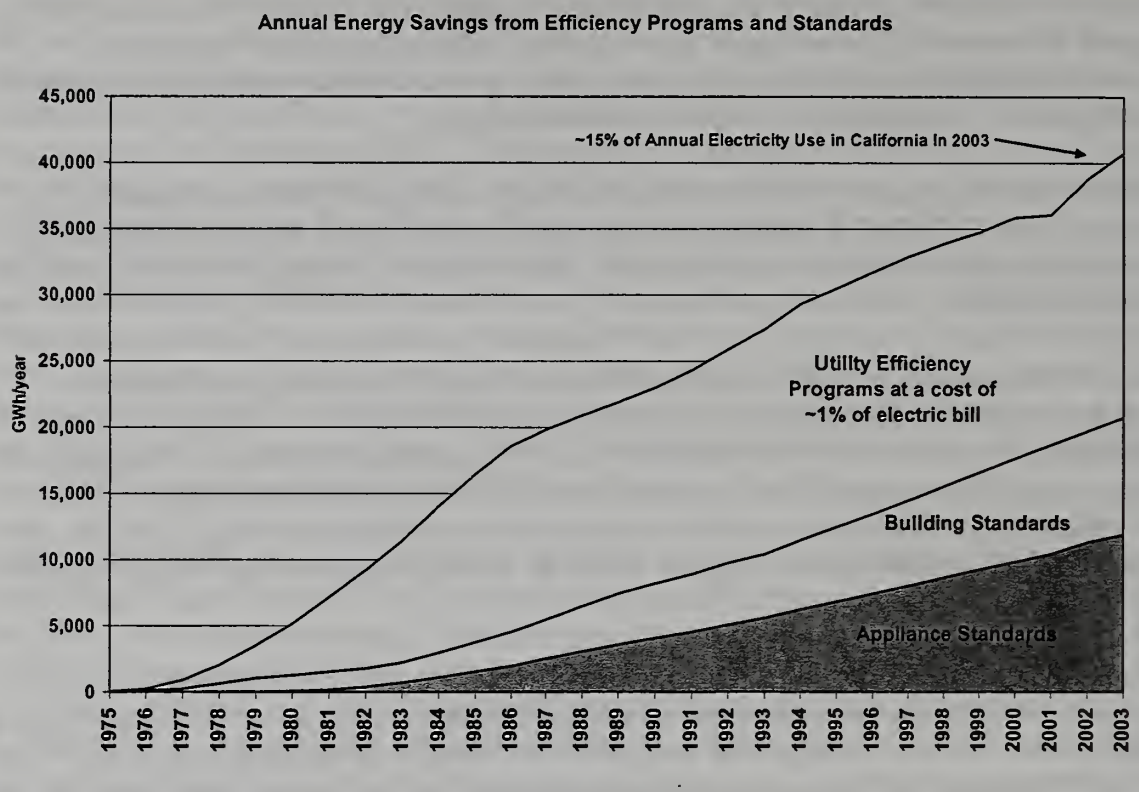
13. *Are there any figures that show the actual energy savings that are achieved by the energy efficient building standards? What steps can be taken to get a better sense of whether the standards are working fully, and to ensure local governments enforce those standards?*

Much on the information available on the effectiveness of the building standards is based on engineering estimates. The following graph shows the cumulative energy savings that have been achieved since 1975 from the building standards, the appliance standards, and utility energy efficiency programs. The two standards programs have been an extremely cost-effective means for the state to reduce its energy demand, with the current cost of the combined program just over $4M per year in staff and contractor costs.

The Energy Commission is also currently working with the CPUC to improve our evaluation of the effectiveness of all of the energy efficiency programs. The most recent thorough review of those savings was completed more than 10 years ago, but the current work will significantly improve our understanding of the present effectiveness of both the standards programs and the utility programs.

The effective delivery of building energy performance standards is critically dependent on the education of tens of thousands of building professionals and trades people throughout the State, their willingness to voluntarily take the actions necessary to insure that their work on the design and construction of buildings complies with the standards, and the knowledge and assertive action of building departments for the buildings under their jurisdiction and of governmental agencies for the buildings under their jurisdiction to enforce the standards.

Enforcement of all aspects of the building codes, including the energy efficiency standards contained in Title 24, is handled by local building officials. The Energy Commission provides training and assistance both to those officials and to the contractors who must follow the standards. This training and assistance is a key element of the overall program, and includes manuals, compliance forms and calculators, newsletters, and videos which are available on the web.
The Energy Commission also works actively with the Contractors State License Board (CSLB) to help ensure that contractors are aware of and follow the Title 24 requirements. The CSLB may actually provide a more direct mechanism for the state to help increase compliance with the Title 24 standards than working through the individual building departments, though the role of the building departments will remain crucial.



14. *The CEC has performed important research and assessment work showing the vast amount of energy used to treat, convey, or dispose of water in the state. The State Water Project alone consumes huge amounts of energy to pump water from the North to the South. Energy efficiency in water use often shows a co-benefit of increasing water supply. What steps is the commission taking to increase energy efficiency in water use? Should it accelerate its efforts and focus more specifically on water efficiency?*

The Energy Commission has long used its authority to establish energy efficiency standards for buildings and appliances to establish water efficiency standards. In the past, the Commission has established standards for low-flow shower heads and toilets. The most recent update to the appliance standards included water efficiency standards for washing machines, as directed by AB 1561. As discussed above, the Energy Commission has sued the federal DOE because of DOE's refusal to grant a waiver for these standards. These standards provide a strong mechanism for saving both water and energy.

Energy Commission staff work with irrigation and agriculture programs at California universities, including the Center for Irrigation Technology and the International Center for Water Technology at Cal State Fresno, the Center for Turf, Irrigation and Landscape Technology at Cal Poly, the Davis Irrigation Education Program at UC Davis, and Cal State Chico. These efforts help reduce water use through developing more efficient

irrigation systems and practices, such as drip irrigation of certain crops and moisture detection and control of irrigation systems that help reduce both water and energy use. The Energy Commission has also been active in working with water and energy associations and agencies to encourage energy conservation through water conservation, and local water desalination and reuse. In some Southern California locations, it is more energy efficient to desalinate brackish water than to transport fresh water from Northern California, with savings of up to 1,000 kWh per acre-foot on the east branch of the California Water Project. This helps reduce the energy involved in providing water, both through recycling and treating other brackish water that is available. The Energy Commission also provides technical assistance and financing to local water and wastewater agencies aimed at improving the energy efficiency of treatment and conveyance systems.

The Energy Commission staff also actively participates in:

- American Water Works Association Research Foundation – serving on project advisory committees for desalination
- American Water Works Association, California/Nevada Section, chairing desalination and energy committees
- Water Reuse Association – serving on the project advisory committee for desalination
- Water Environment Research Foundation – serving on project advisory committee on Water Reuse
- Association of California Water Agencies (ACWA) – by participating in ACWA's Energy and Desalination Committees

While the Energy Commission continues to play an important role in improving the efficiency in terms of both energy and water of the state's water supply, treatment and disposal systems, our expertise in these matters is strongly grounded on the energy side of the equation and on the co-benefits. We are better served in continuing to work with the various state and local water agencies in the state in promoting water efficiency in concert with our existing efforts on energy efficiency than in developing a second emphasis on water efficiency.

Implementation of Greenhouse Gas Performance Standard

Last year, the Legislature and Governor enacted SB 1368 (Chapter 598 Statutes of 2006). Among other things, that law requires the CEC to oversee the implementation of the GHG emission performance standard for publicly-owned (municipal) utilities. The CEC is scheduled to adopt regulations later this month to implement the law.

16. *Please describe the CEC's proposed regulations to implement SB 1368. To the extent they authorize the commission to enforce the law only after a utility has*

entered into a contract for power, please describe how that approach is consistent with the law and with the CPUC's order on this issue.

I have taken the liberty of switching the order of questions 15 and 16, since an explanation of the relationship of the Energy Commission's proposed regulations to the CPUC order on this issue will inform the concerns that I had about the resources the Energy Commission would need to implement SB 1368.

The proposed regulations set the greenhouse gases emissions performance standard (EPS) at 1,100 pounds of carbon dioxide (CO2) per megawatt hour, the same as that adopted by the CPUC. This standard for baseload generation was reached by evaluating the performance of existing combined-cycle natural-gas baseload power plants throughout the West. The regulations contain provisions for accounting for the useful thermal output of a cogeneration facility in calculating compliance with the standard.

Under SB 1368, the standard applies to any long-term financial commitment entered into by a publicly-owned utility (POU) with a baseload power plant with limited exceptions. As described in the proposed regulations, a POU triggers application of the standard when it enters into a covered procurement.

The proposed regulations require a POU to post notice prior to its governing body deliberating on a covered procurement. The regulations also require the POU to notify the Energy Commission with an electronic copy of the notice and supporting documents (or links to them) for posting on the Energy Commission web page.

The proposed regulations also require that, within 10 business days of entering into a covered procurement, the POU will provide a compliance filing to the Energy Commission attesting that the contract is compliant with the EPS. In particular, the compliance filing must attest to the following:

1) The governing body has reviewed and approved the covered procurement and compliance filing in a public meeting
2) The compliance filing does not contain a material misstatement or omission of fact
3) The covered procurement complies with these regulations
4) The covered procurement contains contractual terms that would void the contract and terminate all energy deliveries if the Energy Commission finds that the covered procurement does not comply with these regulations

This information will be used by staff to evaluate compliance with the proposed regulations. The Energy Commission is required to make a determination after review of staff's recommendation whether the covered procurement meets the standard within 30 days of a complete compliance filing. The proposed regulations also create a compliance investigation process to ensure compliance can be verified and remedied, if

necessary, after a commitment has been made or found compliant or exempt from the standard by the POU.

The CPUC's order in this matter requires the state's three largest IOUs to submit to the CPUC for pre-approval all procurements subject to the standard. All load-serving entities (LSEs) other than the large IOUs are required to file annual letters attesting to the CPUC that the financial commitments entered into during the previous calendar year are in compliance with the standard. This distinction is in keeping with the different levels of regulatory oversight by the CPUC of the different LSEs under their jurisdiction. In fact, under CPUC procurement rules, in place prior to this order, the three largest IOUs were required to submit for pre-approval all long-term procurements extending five years or longer.

Unlike the CPUC's existing procurement oversight, the Energy Commission has not previously been involved in review of procurements by the 40 POUs in California, which range in size from approximately 3 MW to over 6,000 MW peak load. Instead, the POUs have been accountable to their elected bodies and to the financial institutions to whom they make representations. They are legally bound to make truthful statements regarding the financial implications of contracted arrangements into which they engage and if they do not, are subject to financial and civil penalties.

The proposed regulations take advantage of these legal requirements. Based upon language recommended in a joint filing by the California Municipal Utlities Association (CMUA) and the Natural Resources Defense Council (NRDC), the regulations provide a mechanism for timely review of covered procurements by the Energy Commission after a procurement has been entered into the the POU. The POU must also make a compliance filing with the Energy Commission that includes an attestation that the procurement is in full compliance with the regulations. And finally, the Energy Commission must make a determination that the procurement is compliant. The proposed regulation requiring any covered procurements to include contractual terms voiding the procurement if the Energy Commisison finds that the procurement does not meet the standard.

SB 1368 calls for the Energy Commission's regulations to be consistent with the standard adopted by the CPUC for LSEs under its jurisdiction. The approach in the proposed regulations is consistent with the CPUC approach given the different regulatory environment of the largest IOUs, the other LSEs under the CPUC's jurisdiction, and the POUs. The Energy Commission's oversight of the POUs is less stringent than that of the CPUC for the large IOUs, but more stringent than that for the other LSEs.

I firmly believe that the proposed regulations will effectively implement the requirements of SB 1368 with little incremental cost to the state.

15. In early workshops held by the CEC, commissioners and staff expressed concerns regarding the commission's resources needed to enforce the law. Does the commission need additional staff to implement the law?

The concerns that I had about the Energy Commission's resources for implementing SB 1368 early in our proceeding relate most directly to the fact that, unlike the CPUC's relationship with the large IOUs, the Energy Commission has previously not been in the business of reviewing procurement decisions by the POUs. The Electricity Committee initially considered a compliance approach for the POUs along the lines of the annual attestation approach the CPUC adopted for LSEs other than the three large IOUs. Relying on the accountability of the POUs to their local boards and to the financial markets on which they relied appeared to be an effective approach, given the lack of experience of Energy Commission staff in the regulatory review and oversight of utility procurements.

As I mentioned in my previous response, we have now included in our proposed regulations a review by the Energy Commission of all covered procurements based on language proposed jointly by CMUA and NRDC. This will require a more intensive staff effort to implement than the Energy Commission considered as strictly required in our initial review of the chaptered bill, which resulted in the inclusion in the Govemor's budget of just 1 PY for implementation of SB 1368. Given the draft regulations now before the Energy Comission, my Executive Director informs me he believes that the recent Senate Budget Subcommittee recommendation to increase our budget change proposal for SB 1368 to 2 PY will be sufficient to implement the regulations as they now stand.

17. Has the CEC examined the power purchases of state government agencies such as the Department of Water Resources to ensure that they are abiding by the same standards imposed on both public and private utilities?

The state water project (SWP) consumes a great deal of electricity as it delivers water to homes, businesses, and farms. Our initial assessment shows that operation of the SWP contributes 0.6% to Califomia's total GHG emissions. This may seem small compared to the largest source of GHGs in California, the transportation sector which accounts for over 40% of the state's total emissions. Nevertheless, the Department of Water Resources (DWR) takes seriously the need to reduce emissions from operation of the SWP.

As DWR completes a GHG assessment through our membership with the Climate Action Registry, and as we move forward in our investigations of cleaner energy sources to replace our reliance on the Reid Gardner power plant, the SWP should be able to significantly reduce its GHG emissions in advance of the deadlines outlined by the Governor and the Legislature.

Lisa Curtis, Administrator
Office of Spill Prevention & Response
April 20, 2007

Statement of Goals

1. What do you hope to accomplish during your tenure as administrator of the Office of Oil Spill Prevention and Response?

My major efforts will be to continue implementing the Office of Spill Prevention & Response's (OSPR) 2007-2010 Strategic Plan which includes recommendations for improved efficiency and effectiveness from the January 2005 Department of Finance Audit Report. This also includes establishing a process for the plan to regularly and continuously be evaluated and/ or modified.

The key focus areas are Funding (accountability), Prevention, Readiness & Response, Technology, Relationships & Partnerships, and Inland Pollution. The following list identifies the goals for each focus area (specific action commitments are detailed in the plan):

I. Funding
   A. Ensure accountability (funding is being spent in accordance with statutory mandates and that there is adequate funding for program goals and actions).
   B. Re-engineer existing processes, to incorporate technological advancements.

II. Prevention
   A. Reduce the risk of oil pollution from maritime operations.
   B. Decrease marine oil spill pollution and oil spill prevention threats.

III. Readiness/ Response
   A. Ensure staff is well-trained to successfully respond to level I, level II and level III spill incidents.
   B. Improve Area Contingency Plans to promote statewide consistency and enhance initial response
   C. Develop statewide Drill & Exercise Program coordinated with our response needs and mandates (ensure high level of drill and exercise participation).

IV. Technology
   A. Identify opportunities to make optimal use of technology for spill prevention, preparedness and response.

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B. Ensure annual funding for research and proactively pursue funds for technology development.
C. Establish a Project Management Office to coordinate all OSPR automated efforts.

V. Relationships/ Partnerships
A. Provide high level customer service to internal and external customers.
B. Foster and create positive internal and external working relationships.
C. Enhance OSPR outreach, marketing and communication efforts.
D. Improve spill notification procedures.
E. Foster interconnectedness and teamwork throughout organization.

VI. Inland Spill Program
A. Develop a Comprehensive Inland Pollution Program.
B. Identify opportunities to meet our responsibilities regarding inland pollution response utilizing existing resources.

Announced and Unannounced Oil Spill Drills

2. How often does your office conduct announced and unannounced oil spill response drills? Please provide us with a list of all of the drills you've conducted since 2001, specifying which ones were announced and which were unannounced.

The announced exercises are initiated by the owners/operators of facilities and vessels handling and transporting oil within California waters in accordance with their oil spill contingency plans. The number of announced drills and exercises attended by OSPR staff has varied from year to year and based on staff availability. Through the years the OSPR has attempted to track drills and exercises attendance through our contingency planning database, which is insufficient. Currently, we are in the process of developing a drill and exercise database that will be linked to our existing spill tracking database. My goal is to implement the final phase of this effort in 2008.

In 2006, we reorganized the existing drill and exercise program personnel from the Marine Safety Branch (MSB) to work directly for our Executive Branch because of the broad program implications. My goal is to increase drill and exercise participation throughout the organization.

The records we have for attending announced exercises are:
In 2001, OSPR staff attended 19 industry exercises.
In 2002, OSPR staff attended approximately 10-20 exercises.
In 2003, OSPR staff attended 12 industry exercises.
In 2004, OSPR staff attended approximately 10-20 exercises.
In 2005, OSPR staff attended 52 industry exercises.
In 2006, OSPR staff attended 50 industry exercises.

The Unannounced Drill Program began April of 2001. These exercises are primarily notification drills, testing the companies' ability to notify the correct entities -- qualified individual, oil spill response organization, state and federal agencies, spill management team -- according to their oil spill contingency plans.

The statistics for unannounced exercises are as follows:
In 2001, OSPR performed 22 unannounced exercises.
In 2002, OSPR performed 23 unannounced exercises.
In 2003, OSPR performed 36 unannounced exercises.
In 2004, OSPR performed 30 unannounced exercises.
In 2005, OSPR performed 80 unannounced exercises.
In 2006, OSPR performed 41 unannounced exercises.
In 2007 to present, OSPR has performed 11 unannounced exercises.

3. To what degree does your office coordinate these with other state entities, such as the State Lands Commission and with the federal government?

We coordinate with other entities to a very high degree. The United States Coast Guard (USCG) is routinely involved in OSPR required exercises as the USCG has similar federal regulatory requirements. OSPR and the USCG, including other federal agencies such as EPA, the Department of Interior's Minerals Management Service, and the Office of Pipeline Safety, follow the "National Preparedness for Response Exercise Program Guidelines" (NPREP). Oil companies invite the State Lands Commission to participate in exercises of Marine Terminals and the State Fire Marshal's Office to participate in drills concerning oil pipelines. When an exercise involves local jurisdictions, such as fire departments, hazardous material teams, air boards, Office of Emergency Services, etc., OSPR exercise planners consistently encourage the companies to include appropriate local agency personnel to participate.

4. Please describe the four out-of-state drills your office plans to conduct with the requested budget augmentation.

Attending the out-of-state spill management team exercises allows OSPR to economize resources because most successful spill management teams represent many plan holders. OSPR regulations require each vessel company to conduct spill management team exercises annually. OSPR regulations do not require that the spill management teams be located in California. Major spill management team firms are located in such places as New Jersey, Connecticut and Texas. The four out-of-state exercises will be conducted to test four spill management team companies that do not operate within the state of California, but represent plan holders who operate in California. The OSPR needs to attend a number of these out-of-state exercises per year in order to ensure that the quality of these responses

and responders are maintained. The drills are tabletop exercises that follow the NPREP and test general objectives listed in the guidelines, including required spill notifications, oil recovery and disposal, communications, etc. Without OSPR attendance, there will be no requirement for testing clean up strategies for sites in California determined to be environmentally sensitive.

Succession Planning in the Office of Oil Spill Prevention and Response

5. How many middle or senior management positions in your office are currently eligible, or soon will be eligible, for retirement?

We currently have 17 middle/ senior management personnel (17 out of 28) eligible, or soon will be eligible (within the next five years), for retirement.

6. Does your office have a succession plan in place? If so, please describe the major points of that plan.

Succession planning is a Department-wide issue and as been deemed a priority by Director Broddrick. He has directed Office of Training and Development (OTD) personnel to develop and implement a Department Succession Plan. The plan as it is now, in draft format, addresses six major issues:

1) The plan incorporates the 17 leadership competencies identified by the CENTRE for Organizational Effectiveness and taught at our Leadership Academy. These competencies will be advertised in training offerings beginning in 07/08 FY.

2) OTD is developing training modules and working with traditional vendors that will address these competencies from entry level positions through an employees career with DFG. This way all employees seeking training are moving forward in achieving the leadership competencies.

3) DFG will encourage managers and supervisors to engage employees to explore non-traditional training and development opportunities for their employees; such as, job shadowing, mentoring, job rotational programs, training, and development assignments.

4) An expansion of our recruitment and retention efforts. We are looking at addressing pay inequities, classification specification updates, expanding the recruitment efforts in the field, implement a structured exit interview process, and enhance the employee recognition program.

5) OTD is working on an employee, supervisor, and manager intranet-based toolkit. This toolkit will provide resources "at your fingertips" on hiring, employee development, teambuilding, and other related topics.

6) DFG will encourage that all employees participate in the Individual Development Plan (IDP) process in order to prepare employees to meet their career goals. This will provide a skilled employee base to fill future vacancies. Specific IDP's have been developed for Career Executive Appointment (CEA) positions and one for Supervisory/Management positions. These IDP's include information on required and desired training for each of the specific positions. Currently these are under review and are anticipated to be rolled out so that "all" employees throughout the organization participate.

Tar Balls Washing up on North Coast Beaches

7. Have you been able to identify the source of these tar balls? Is it natural seepage or was it from an ocean-going vessel?

The tar balls that washed up on beaches in Watsonville, Aptos, Pacific Grove, and Moss Beach were identified as natural seeps. OSPR chemists at our Petroleum Chemistry Laboratory (PCL) use a machine called a Gas Chromatograph /Mass Spectrometer (GCMS) to finger print oil and/or tar balls. It is done by viewing the hydrocarbon chain from the petroleum source. All oil hydrocarbons have a different carbon chain and can be differentiated by comparing the analysis from the GCMS of each of the petroleum oil samples. We currently maintain a catalog of "fingerprinted' petroleum samples that can be used to identify an unknown source.

Oil Pipelines

8. What is your view of the status of oil pipelines in California? Are the necessary investments being made to upgrade them to ensure safety?

As you are aware, OSPR does regulate the contingency planning of various pipelines that may impact the marine waters of the state i.e. pipeline leaks or spills. The State Fire Marshal's Office (SFM) is the appointed office that has exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines and also acts as an Interstate Agent for the U.S. Department of Transportation. The SFM Office also regulates pipeline integrity and works jointly with our investigators to determine the cause of pipeline spills. The federal Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (PIPES) has identified damage prevention as the number one issue for the US DOT to address.

I have been in direct communications with the SFM since my appointment to the Acting Administrator position in September of 2005. The SFM Office indicates that the safety record of these SFM regulated pipelines has steadily improved and there has been a decrease in pipeline related spills in California.

The SFM has seen an increase in the replacement of the pipeline infrastructure. Several new pipelines and terminals are in the process of being permitted and built to meet the fuel demands of California. Pipelines are an integral part of providing energy for all California residents. These pipelines traverse the entire State and often are installed in areas where the environment is sensitive. OSPR personnel recently developed and are offering their first "Permitting Energy Pipelines" course for reviewing DFG personnel to receive an understanding of the regulatory framework for pipeline permitting, pipeline operation technology, and what mitigation measures can be implemented to minimize potential impacts to sensitive resources.

9. How is the issue of abandoned oil pipelines being dealt with? Do we know where they are? Do we know if they still contain oil? Are any of them leaking? If so, where are these located?

Since 1980, federal pipeline safety regulations have required pipeline operators to have procedures for the abandonment of hazardous liquid pipelines. In 1997, the SFM issued guidelines for pipeline operators to obtain written approval of their abandonment plan and process.

The SFM maintains maps depicting the location of all active and abandoned pipelines under their jurisdiction since 1985. They also have historical maps showing the location of some previously abandoned lines dating back to the early 1960's. The SFM receives a few requests each year for assistance from counties and cities to help identify ownership of abandoned pipelines. In most cases, the SFM is able to identify the current owners of the pipelines and provide that information to the local agencies.

Prior to 1980, abandonment procedures were dictated by permitting agreements with local agencies. Typically, the pipelines were flushed with water, capped and left in place. We do not know if these pipelines or any earlier abandoned pipelines still contain oil. OSPR has responded to corroded or damaged abandoned pipelines in the past that have released a residual oil/water mixture from the abandonment procedures. As we become aware of incidents, we actively respond to mitigate the impacts of a pipeline release on the environment. We cooperatively work with the SFM to determine the cause of the release and to locate the responsible party.

Liquefied Natural Gas Tanker Safety

10. How does your office participate in addressing the safety issues surrounding LNG tanker facilities? Are there different safety issues for in-port facilities and for deep water offshore facilities?

The Department of Fish and Game and the Office of Spill Prevention and Response has four representatives that participate on the California State Liquefied Natural Gas (LNG) Interagency Workgroup. These representatives look at all facets of the project from their various areas of expertise, including maritime safety and security, legal issues, biological and environmental issues. Representatives from OSPR have also participated in Risk and Hazard Analyses conducted by the California State Lands Commission and their contractor for the BHP Billiton Port Cabrillo project that looked into the construction and operation of both the LNG Facility and the LNG Tank Vessel. During this analysis this workgroup looked into risks and hazards associated with natural, accidental and intentional incidents and accidents.

The Los Angeles/ Long Beach Harbor Safety Committee created a LNG Workgroup to look into the risks associated with the maritime transportation of LNG into their harbor complex. At the time of their report the workgroup determined that the risks and hazards associated with the carriage of LNG into the port posed no greater risk than any other Regulated Hazardous Cargo. The potential risks for in-port and deepwater offshore facilities will vary depending on the proposal. Harbor Safety Committees will be evaluating proposed projects for tanker safety on a case by case basis.

11. Are you addressing security issues along with safety issues of LNG tanker facilities?

Although DFG and OSPR do not have regulations that cover security at either a LNG facility or a vessel, they do participate with various agencies and workgroups that do. The California State Lands Commission (SLC) has regulations that cover security at regulated marine facilities. They require a limited number of facilities to meet specific physical security requirements including creating a facility security plan.

OSPR works closely with the USCG and their Area Maritime Security Committees (AMSC) in Sector San Francisco, Sector Los Angeles/ Long Beach, and Sector San Diego. As part of our participation with the AMSC's, the OSPR also participates in USCG security training and exercises programs. Each of the USCG Sectors is required to conduct a tabletop or full scale deployment exercise annually, one or more OSPR representatives have participated in each of these exercises. OSPR currently has a member on loan to the Governor's Office of Homeland Security (OHS) to coordinate security issues and security exercises with the major ports. OSPR also participates in the OHS Terrorism Liaison Officer Program that shares

critical information related to security threat among all Federal, State and Local law enforcement organizations through the State Regional Threat Assessment Centers. With issues related directly to LNG Security, the OSPR participates when requested by the USCG to work on project specific issues.

The OSPR oversees five statewide Harbor Safety Committees (HSC). The committees have members appointed by the Administrator who represent all facets of the port community (including port security and homeland security). The LA/AB Harbor Safety Committee has created a Port Security Workgroup to address issues related to specific incidents in that port. San Diego has created a Port Security Workgroup that is not associated with the HSC. HSC's have the authority to petition the Administrator for new or additional membership. The first LNG representative was appointed to the Port Hueneme Harbor Safety Committee this year. Additionally, the administrator has the authority to direct a HSC to address any issue affecting maritime safety or security.

DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

Preston DuFauchard
California Corporations Commissioner

IN REPLY REFER TO:
FILE NO: _____

April 20, 2007

Senate Rules Committee

APR 20 2007

Appointments

The Honorable Don Perata
Chair
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

I write in response to the March 29, 2007, letter from the Senate Rules Committee requesting certain information in advance of my confirmation hearing, currently scheduled for May 10, 2007, at 1:30 p.m. In tailoring this letter, I have included the questions and the text of lead-up material to the questions before providing my responses. Also, enclosed, as requested, is an updated *Form 700*, Statement of Economic Interest, which is the same as the previous statement.

Responses to Questions:

Goals

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as commissioner of the Department of Corporations?*

Response to Question 1:

My strategic five-year plan identifies four main objectives for the Department of Corporations. Those objectives can be broken into two broad categories, improving public protection and accountability through the Department programs, and improvement of operational management across various Department divisions. The specific goals in the realm of consumer protection and accountability include: (1) improving licensing and examination processes to complete all exams and license reviews before applicable statutory deadlines, and broaden the focus of certain regulatory exams; and (2) improving public accountability by making more information available to the public about Department operations.

The Department has a track record of strong consumer protection. For example, since 2001, through its regulatory exam procedures the Department has compelled finance and mortgage companies to make more than $55 million in refunds to consumers. The Department makes educational, outreach efforts to the public through its Seniors Against Investment Fraud (SAIF) seminars and Troops Against Military Scams (TAP$) seminars. There is more we can do, however, and we have begun to implement changes. One such change concerns the Department's regulatory exams of mortgage lenders.

The focus of regulatory examinations of Department licensees traditionally has been at the transactional level, examining for the correct charges of fees, use of the proper forms, proper disclosures, etc. To be sure, these are important features of the exam process. Given the rapidly changing conditions in the non-traditional mortgage market I recently implemented daily monitoring of certain companies. For these companies the Department is closely monitoring non-transactional matters such as the relationship between the pipeline of originations and the need for a licensee to access credit facilities or warehouse lines to accommodate that pipeline.

We have also issued a survey to Department licensees to get a better picture of the volume of nontraditional mortgages that were made in 2006. From that survey, we will be able to determine which companies originated higher volumes of these loans, and establish regulatory exam priorities based on the survey results in addition to any applicable statutory review cycle.

In developing the strategic focus for examinations, I have directed staff to look at financial solvency and risk management practices of the businesses the Department licenses. This will require educational efforts for Department staff. I have already reached out to the California Department of Financial Institutions (DFI), the Conference of State Bank Supervisors (CSBS), and the California Bankers Association (CBA) as resources to address some of these educational needs, and received positive responses. Finally, in order to remain current on changes in the types of mortgage products offered, we are in the process of establishing an advisory committee, consisting of mortgage lenders and consumer advocates.

In terms of public accountability, I have asked the Department staff to begin tracking certain information so that at the end of the calendar year, the Department can publish a report of its performance on the Department website. My objective here is to provide better transparency and accountability to the public regarding the Department's operations. For example, I intend the report to include the number of examinations conducted, licenses issued, number and type of enforcement actions taken, criminal referrals made, types of securities approved for issuance, and mergers approved through the fairness hearing process. Some of the information exists, but retrieval has been cumbersome, and is only disclosed to other state departments or agencies. I believe, however, that the information should exist for public consumption.

My operational management goals pertain to two areas: (1) improving program management and accountability by reducing the number of IT platforms currently in use at

the Department by two-thirds; and (2) establishing a succession plan for the Department. We are in the process of exploring ways to improve some of these operational efficiencies, including short-term and long-term explorations for improvements to the Department's IT systems. In the short-term, the Department is working with outside contractors to assist with IT solutions, and using spreadsheets to capture information where no database yet exists. For the long-term, we are conducting a needs assessment.

Finally, the issue of succession planning is one many State agencies and departments face. The Department of Corporations is no different. A number of staff may have the opportunity to retire in the next five to ten years. These people, in the main, have developed a wealth of knowledge and expertise in the laws the Department regulates. There exists a gap between the expertise level of this cohort and the less experienced group of Department staff. The gap is not uniform among programs at the Department, but is nonetheless, a cause for concern. We are looking at ways to address this issue, through recruitment, education and training. On the issue of training, we are exploring the idea of creating an internal training coordinator, who would organize continuing educational training within programs, and interdepartmental training programs for broader awareness across divisions within the Department.

Nontraditional Mortgage Lending Products and Practices

The Senate Committee on Banking, Finance, and Insurance held an informational hearing on nontraditional residential mortgage lending products and practices on January 31, 2007. At this hearing you were asked whether your department has the statutory authority to apply the guidance on nontraditional mortgage product risks developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to the department's licensees. A guidance document sets forth best practices for the industry. This guidance articulates expectations for certain mortgage products and practices. You responded affirmatively and noted that the department was likely to consider making a rule later this year directing its licensees to comply with the guidance.

On March 2, 2007, the Federal Reserve Board, in conjunction with other federal financial agencies, issued a joint press release seeking comment on a subprime mortgage lending statement. A statement is similar to a guidance in that it expresses expectations for the industry and sets best practices. This statement discusses criteria and factors that should be considered in issuing adjustable rate mortgages, consumer protection issues, and the need for clear policies, procedures, and systems. The statement is designed to provide tools to manage mortgage lending risks for both the industry and consumers.

2. *What is the status of your rulemaking applying the guidance to your licensees? Once the proposed Subprime Mortgage Lending Statement is finalized, do you have plans to incorporate it into your rulemaking?*

Response to Question 2:

The Department is in the process of drafting regulations adopting the CSBS/AARMR Guidance on Nontraditional Mortgage Products. I anticipate these regulations will be available by May 4, 2007, and will provide a copy as soon as the proposed regulations are ready.

On the issue of incorporating the Subprime Mortgage Lending Statement into the Department's rulemaking, I will need to see the final text of the statement before making a decision to incorporate it into the Department's rulemaking. Based on what has been published so far, I anticipate that the Department will supplement its rulemaking to address the matters set forth in the March 2, 2007, statement.

3. *Do you plan to submit comments to the Federal Reserve Board on its proposed Statement on Subprime Mortgage Lending?*

Response to Question 3:

The Supplemental Statement by the Federal Reserve Board does not affect the Department's licensees directly. However, since, as stated above, it is likely that the Department will address this Supplemental Statement in the Department's rulemaking the Department may submit a letter supporting the rule as stated. In addition, since many of the originators of these adjustable rate mortgage (ARM) products are state-regulated entities, the Department would encourage the federal regulators to coordinate the language and effective dates of the regulations with the states, whether through the Conference of State Bank Supervisors or otherwise. The Supplemental Statement appears to provide a meaningful implementation of the Interagency Guidance on Nontraditional Mortgage Products. In its current form, the Supplemental Statement may present the need for some technical clarification. For example, the definition of subprime borrower appears to include those with credit scores below 660. Many in the origination industry have defined subprime borrower to include those borrowers with credit scores below 620, so there may need to be some consistency about the intended applicability of the Supplemental Statement to subprime borrowers.

"Payday Lending" Law

In 2002, SB 898 (Perata) Chapter 777, Statutes of 2002, enacted the California Deferred Deposit Transaction Law. The law details the parameters for the practice of conducting deferred deposit transactions. The law requires the commissioner to produce a report on December 1, 2007, regarding its implementation. The report must include information regarding the demand for deferred deposit transactions and growth, trends, and advertising practices of the industry. This report is meant to identify strengths and deficiencies of the law as a basis for potential legislation. At the moment the department's prime source of information is licensees, whose comments are likely to reflect the supply

side of deferred deposit lending. Legislators and consumer groups have raised concerns that the report will not sufficiently present a balanced and comprehensive view of the industry without input from payday loan customers.

You noted to the Budget and Fiscal Review Committee, Subcommittee 4, on March 5, 2007, that, while conducting a consumer survey was not within the department's expertise, you would have "no problem" contracting with an outside company to gather such information. However, you stated in your report to the subcommittee that the fund from which monies would be drawn for such a study is already depleted.

4. *What is the status of your report to the Legislature regarding implementation of the California Deferred Deposit Transaction Law?*

Response to Question 4:

In January 2007, the Department issued surveys to its licensees to collect information about customer usage of CDDTL transactions. In addition to the volume of transactions and frequency of use, the Department is trying to assess from this information whether consumers have used CDDTL transactions for emergency short-term use or for longer-term borrowing needs. Through April 10, 2007, the Department has received responses from substantially all of its licensees. We are currently transferring the data into a database for further analysis.

The Department's source of information for the December 2007 report to the Legislature will include information from various constituencies. For example, I was the co-chair of the Military Financial Protection Task Force, established by Executive Order last August. Part of my responsibility on this Task Force was to understand the impact of CDDTL transactions on military personnel, who are current consumers for payday loans. I met with military personnel, industry groups and others to discuss the implementation of the CDDTL laws on the military. As a result of my work in this regard, the Administration is sponsoring Assembly Bill-7, which will eliminate CDDTL transactions for military service members. When the Task Force made its recommendations the Department obtained information from a substantial consumer base for payday loans. That information will be relied upon in the December 2007 report.

In addition to this data collection effort, the Department has been in contact with other state regulators of "pay day" loans to assess different regulatory schemes and practices. Part of the efforts to prepare the report has also included reviewing background materials published by various organizations.

Finally, the Department has issued a Request For Proposal to conduct a survey of consumers who engage in CDDTL transactions. Included together with this letter is a copy of the RFP. Funding for the consumer survey will come from existing resources.

5. *How do you plan to meet the requirements of the law which mandate that the report include information regarding, among other things, the demand for deferred deposit transactions and the industry's advertising practices?*

Response to Question 5:

Since March 2006, licensees have provided the Department with annual reports regarding the volume of CDDTL transactions in the State pursuant to Financial Code section 23026. This information has presented one picture of the demand side of these transactions. In other words, the reports capture year-over-year comparisons in the volume of loan transactions. The report does not capture any unmet short-term demand, that is, by those who do not have a checking account, for example. In addition, the report does not capture artificially created demand, or demand created by marketing and referrals as opposed to need. The Department will attempt to capture such artificial demand in a consumer survey.

Advertising practices, such as violations of Financial Code section 23027, are captured during the Department's regulatory examinations of its licensees. The Department will report this information from its exam results.

6. *Have you received any licensee survey responses yet? If so, what do preliminary results from returned surveys indicate?*

Response to Question 6:

The Department has received responses from substantially all of its licensees. For those licensees who have not responded, we are sending license revocation orders. We are transferring the data received from the responses into a database to analyze. At this point, we have made no preliminary analysis from the data. If such preliminary analysis becomes available prior to the hearing, I will share it.

7. *Do you think consumers should be surveyed for this report? If so, do you plan to do so?*

Response to Question 7:

Yes, the Department prepared a Request For Proposal (RFP) to conduct a consumer survey, which was published on the Department of General Services website on April 13, 2007. Included together with this letter is a copy of the RFP.

The consumer survey will provide useful data about the consumer experience that cannot be gleaned through responses from Department licensees. In addition to providing information as to the characteristics of who uses these products, the consumer survey will provide information about referring consumers to other loan stores, possibly suggesting

artificial demand. The survey will inform the Department as to whether consumers are charged non-sufficient fund fees at their banks for dishonored checks. These data will add to the analysis of the cost of the CDDTL transactions for some consumers.

8. *The February 2007 Deferred Deposit Originator Bulletin, a periodic publication issued by the department, notes a "major concern" with the level of noncompliance with the California Deferred Deposit Transaction Law, as evidenced by recent regulatory examinations. The bulletin then lists a number of enforcement actions. What is the department doing to ensure compliance?*

Response to Question 8:

When given responsibility for the CDDTL industry, the Department set as its highest enforcement priorities prosecution of businesses engaged in unlicensed activities and businesses that overcharge consumers. The Department has been successful in getting overcharges returned to consumers, and in closing down unlicensed operators. For example, in calendar year 2005, the Department visited approximately 150 locations to investigate possible unlicensed activities, resulting in more than 20 enforcement orders. In 2006, the Department brought approximately 20 actions against companies on the basis of unlicensed activities, and another 10 revocation actions against companies for filing applications with false statements, making multiple loans, charging excessive fees, or failing to maintain a surety bond. Through regulatory examinations, the Department made businesses refund approximately $22,500 to consumers in 2006.

For areas involving disclosure of fees and other items, the Department sought to have companies correct any deficiencies during the regulatory exam cycle, which is consistent with Department activities for other regulated industries. Even prior to completing the exam cycle, however, the Department has held quarterly CDDTL Advisory Committee meetings. These meetings include industry participants, members of the military, and consumer advocacy members. At the meetings, the Department reviews the areas of noncompliance, types of actions brought by the Department, and provides results of regulatory exams. At these meetings the Department encourages the industry participants to educate their constituents about areas to improve compliance with statutory requirements. In addition to these meetings, the Department has published CDDTL Bulletins that set forth the requirements of the CDDTL laws for industry members to review.

Finally, I have been invited to speak to the CDDTL industry at its annual conference, held in San Francisco on April 23, 2007. At that presentation, I intend to use the opportunity to express the urgency for substantial improvements of industry compliance with the laws, and encourage their members to review the bulletins the Department publishes if they have questions about the legal requirements they should follow, or even call the Department for clarification of requirements.

Also, during that presentation, I intend to address the Department's observations of this industry at the conclusion of the regulatory cycle at the end of 2006. These observations have led the Department to develop yet an additional tool, which will permit the Department to assess a penalty for noncompliance at the time of the regulatory examination. Due to the level of noncompliance, the Department has decided to complement its enforcement activities. Currently in process, the Department is creating a citation form for examiners to issue to licensees, analogous to a traffic ticket, that assesses a penalty for noncompliance with disclosure and other laws.

California State Auditor Report

The California state auditor issued an audit of the Department of Corporations as requested by the Joint Legislative Audit Committee in January 2007. The audit noted that an overarching concern is the lack of accurate data compiled by the department. This problem extends to gauging processing time for complaints, licenses, and workforce planning. At the prehearing of the Budget and Fiscal Review Committee, Subcommittee 4, on March 5, 2007, you mentioned that you would like to update the department's information technology capabilities and that you were presently consulting with other departments.

9. *Have you developed goals for updating the department's information technology systems and a timeline for achieving them? If so, please share these goals and your timeline with the committee.*

Response to Question 9:

The Department has prepared a sixty-day corrective action plan in response to the BSA Report. The Department has recently hired a Chief Information Officer, who will begin to inventory the systems in place. I have formed an IT Steering Committee, consisting of individuals from various programs in the Department, to help address the IT needs. In the near term, we are working with existing vendors to provide some of the IT support needs, and working with spreadsheets rather than databases to capture information needed during the workflow process.

Approximately eight months ago, the Department met with the Department of Finance's Office of Technology Review, Oversight and Security (OTROS) unit to obtain information concerning the process to develop and implement a new system in the long term. We understand that it takes approximately three years to obtain the appropriate approvals and develop and implement a new system. The Department also met with other departments to review their information technology system.

We are in the process of assessing whether there is a need to design a new system, or if there is an existing system currently in use at another department that we can adapt to the Department's needs. Also, we are assessing how long it may take to implement such

a system. The objectives for any such system will be to provide better and faster service to the public, provide management reports, consolidate into one database the statistical data currently in approximately 30 databases and eliminate all freestanding legacy systems. The Department envisions a system that would allow the electronic submittal of applications into a workflow information system.

In addition, the Department envisions the new system would track the licensee from the application to license issuance, licensee history, licensee examination data, and include any complaints and/or enforcement actions against a licensee. The system would also be able to provide management reports that would include, but not be limited to, statistical data, aging schedules, examination schedules, referrals to local law enforcement and prosecutors, and timekeeping.

Implementation of this type of system requires several approvals. If approved, full implementation may take the Department into several fiscal years for completion, depending on the scope of the system to be designed.

10. *The auditor noted that the department recently implemented changes to its complaint processing system that are consistent with good business practices. Have you conducted an analysis of this new system and, if so, what are the results?*

Response to Question 10:

When I arrived at the Department, I learned that there was no central intake unit responsible for processing complaints. We designed and implemented a central "complaint team," consisting of staff from the different programs. The "complaint team" is responsible for logging complaints into a database, referring the complaints to the appropriate program in the Department for resolution, and notifying the complainants that the Department has received their complaint and is handling it appropriately. The "complaint team" has been in place since mid-August 2006 and produces monthly statistical reports regarding the number of complaints, the processing time for complaints, and the number of acknowledgement letters or phone calls to complainants.

A preliminary six-month analysis of the centralized "complaint team" process reveals the following results:

1. On average the Department acknowledges receipt of the complaint to the complainant, either by a reply letter or a telephone call, five days from the time the Department receives the complaint. Previously, the Department's goal was for complainants to receive acknowledgement letters within 15 days of complaint receipt.

2. The Department has received 1139 complaints. The complaints are broken down as follows: 389 to the Enforcement Division, 75 to the Securities Regulation Division, and 675 to the Financial Services Division.

3. On average the "complaint team" processes the complaints within three days. That is, the team transmits the matter to the appropriate division, or refers it to the appropriate governmental entity, within three days after receiving the complaint.

The centralized "complaint team" concept appears to have expedited the response time to complaints throughout the Department, as well as provided direct workflow of complaints to the programs for resolution.

In August, I intend to have a one-year review of this program, and decide whether a formal reorganization is appropriate.

Staffing

The governor's 2007-08 budget proposes an increase of two examiner positions and budget change proposals to permanently continue three of seven limited-term positions approved last year. Meanwhile, according to the state auditor, the department is not conducting examinations of escrow office and finance lender licensees as required by law, and the department's own workload data suggest an additional 34.3 examiners (32.3 more than requested) are needed to perform the anticipated 2007-08 workload. In addition, the auditor found long delays in processing applications and resolving complaints.

11. *At the subcommittee prehearing, you expressed hopes that existing staff will increase efficiencies, and indicated that the budget proposal submitted was appropriate. How do you plan to increase such efficiencies at a rate that will resolve the staffing concerns raised by the auditor?*

Response to Question 11:

The Department is in the process of reviewing its internal processes for duplication, unnecessary processes, improving workflow, and standardization of processes across Divisions. To that end, the Department is in the process of reviewing business process mapping to find areas to increase efficiencies. The Department is aware that efficiencies in processes will not completely reduce the processing time for applications and complaints, nor completely eliminate the backlog of examinations. As a result, the Department is also considering submitting staffing proposals for the May Revision that would address the examination backlog.

We have undertaken a redesign of some of the Department's business processes as well. For example, to expedite the processing time for Finance Lender applications, the Department has revised the application form itself. The new form is currently out for public comment, and should be in use by this fall.

12. *You further advocated an interdisciplinary approach to examinations. For example, you said that educational outreach sessions may help prospective licensees to better understand what is expected of them and expedite the overall licensing process. What is the status of this effort?*

Response to Question 12:

In June 2006, the Department began to conduct educational seminars for Investment Advisors. One of the objectives of these seminars is to provide information to Department licensees on the type of information the Department requires to be maintained on premises, and the various types of information the Department may review during its examination process. With this information, the Department hopes its licensees will adopt better record keeping practices, which will allow Department exams to become more streamlined and efficient. Depending on how these educational efforts proceed, there should be fewer exceptions noted during the exams for those who attend the educational sessions. The corollary benefit may be that the examiners could conduct more exams annually.

Once the Department held several of these sessions for Investment Advisors, the Department decided to hold educational seminars for Escrow Agents. We have held one such session in southern California, and are in the planning process for another.

Feedback from these sessions has been positive. We have not yet correlated the results from the educational efforts with the examinations of those who attended the seminars to see how effective the presentations have been in meeting the efficiency objectives. We plan to do so in July to give us a year's worth of data. Anecdotal feedback, however, indicates that the seminars will improve the record keeping practices for some of the licensees who attended the seminars.

I would like to thank the Senate Rules Committee for providing me the opportunity to address the concerns raised in the March 29, 2007, letter. In addition, if I obtain additional information the Rules Committee may be interested in considering, I will pass that information along as soon as possible prior to the confirmation hearing.

Sincerely,

Preston DuFauchard
California Corporations Commissioner

Enclosures:
- Form 700
- RFP

565-R

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